16-487

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 124.

THE CITY OF PARKERSBURG, APPELLANT,

VS.

ISABELLA BROWN, HARRIET E. BROWN, WILSON, COLSTON & CO., THOMAS H. GAITHER, SAMUEL K. GEORGE, J. C. M. POWELL, AND GEORGE M. MAYO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED OCTOBER 25, 1879.

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1 Circuit court of the United States, district of West Virginia.

At a circuit court of the United States for the fourth judicial circuit, in and for the district of West Virginia, continued and held at the city of Parkersburg, in said district, on the 31st day of January, A. D. 1877, among others were the following proceedings, to wit:

ISABELLA BROWN, PLAINTIFF,
vs.
THE CITY OF PARKERSB'G, M. J. O'BRIEN, William S. O'Brien, P. F. O'Brien, Jane C. O'Brien, and J. S. McCluer, defendants.
} In equity.

Be it remembered that heretofore, to wit, on the eighth day of December, in the year of our Lord one thousand eight hundred and seventy-six, the said Isabella Brown, by Mess. Marshal, Fisher and Van Winkle, her attorneys, filed a bill of complaint and exhibits against the above-named defendants in the words and figures following, to wit:

Bill.

2 To the honorable the judges of the circuit court of the United States for the district of West Virginia, sitting in equity:

Humbly complaining, showeth unto your honors, your oratrix, Isabella Brown, who is a citizen and resident of the State of Maryland, and exhibits this bill on her own behalf and on behalf of such other persons holding like claims against the respondent, "The Mayor and City Council of Parkersburg," as may be entitled and may elect to unite in this suit and contribute to the expense thereof, that heretofore, on the 15th day of December, 1868, the legislature of the State of West Virginia passed an act entitled an "Act authorizing the mayor and city council of Parkersburg and the board of supervisors of Wood County, West Virginia, to lend their bonds for manufacturing purposes," by the first section of which it was enacted that "The mayor and council of the city of Parkersburg are hereby authorized and empowered to issue the bonds of said city to an amount not exceeding two hundred thousand dollars, for the purpose of lending the same to manufacturers carrying on business in or near the said city, in the county of Wood. The said bonds shall run twenty years and shall bear interest at six per cent. per annum, and they shall be issued upon the recommendation of the following-named persons, who shall be considered the trustees of said bonds, that is to
say, Daniel R. Neal, Samuel Stewart, Henry Logan, James M.
3 Jackson, W. B. Caswell, Thomas D. Wilson, and William N.
Chanceler, who shall have power to fill all vacancies that may occur in their number. They shall have power to make loans of said bonds to good solvent companies or individuals on the following terms, that is to say, when persons engaging in manufacturing shall have invested in their business thirty-five per cent. of the amount proper to be employed in the business of manufacturing, clear of all liabilities, to be shown to said trustees by affidavits of the applicants or by other satisfactory evidence, and when

such proof is furnished then said trustees, five members concur'ing, may loan to such applicants such amounts of said bonds as they may deem proper and judicious, not, however, to exceed sixty-five per cent. of the capital proposed to be used in manufacturing by the applicant; provided, however, when such bonds shall be made the interest thereon shall be paid by borrower semi-annually to the treasurer of said city, and five per cent. of the principal shall be paid annually to the said city by the borrower, to be placed to the account of the sinking fund of said city until the several loans are paid in full.

"The said bonds shall be secured by deed of trust or mortgage on real estate or by other satisfactory security sanctioned by said trustees.

4 "And provided also that no bonds shall be issued under this section until a majority of the qualified voters of said city concur in the same by voting for the same at an election to be held for that purpose." And your oratrix respectfully asks that reference may be had to said act of assembly, as the same appears in the authorized publication of the laws of the State of West Virginia, for a full and complete copy of said act, and that the same may be read as part of this bill of complaint.

Your oratrix charges that the said act was submitted to and concurred in by a majority of the qualified voters of said city at an election held for that purpose on the 17th day of April, 1869, and she further charges that afterwards vacancies having occurred among the persons designated in the said act as trustees of the loan thereby authorized, and such vacancies having been filled as authorized by said act, James W. Dils, Samuel Stewart, Jacob Jackson, J. N. Camden, and W. N. Chanceler recom'ended to the mayor and city council of Parkersburg to lend the bonds of said corporation authorized to be issued under said act to M. J. O'Brien and W. S. O'Brien, copartners under the name and style of M. J. O'Brien and Brother, to the amount of twenty thousand dollars to aid the said firm in conducting a manufacturing business in said city of Parkersburg.

5 Your oratrix further charges that said trustees last aforesaid of said loan in their said recom'endation set forth and declared the security to be given for said loan of bonds to said firm, as said trustees were authorized and directed to do by said act of assembly, all which will more fully appear from a copy of the proceedings of said trustees relative to said recom'endation contained in the exhibit hereinafter referred to as Complainant' Exhibit I. B., No. 1, to which as a part of this bill your oratrix craves that reference may be made.

She further charges that, in pursuance of said recom'endation of said trustees, the said mayor and city council of Parkersburg resolved to make said loan of said bonds to said firm of O'Brien & Brother, as will appear by refer*a*nce to a copy of the resolution of said body passed on the 13th day of May, 1873, herewith filed and prayed to be taken as a part of this bill, marked Complainant's Exhibit I. B., No. 1.

Your oratrix further charges that subsequently, it having been discovered that the whole security required to be given by said firm for the first part of said loan of bonds under the terms of the recom'endation of said trustees, had not been given at the date of said resolution of the 6 13th May, 1873, contained in Exhibit I. B., No. 1, the said mayor and council, before issuing said bonds, required the additional security mentioned in said recom'endation to be given, and the same was accordingly given, as will fully appear by refer*an*ce to a copy of the proceedings of the said mayor and council of the 10th of June, 1873, herewith filed and prayed to be taken as part of this bill, marked Complainant's Exhibit I. B., No. 2.

She further charges that the deed of trust mentioned in said Exhibit I. B., No. 1, was duly executed on the 13th day of May, 1873, and the additional security above referred to was given at the date of the said resolution of June 10, 1873, and that after said last-mentioned resolution said deed of trust was delivered and recorded on the 18th day of June, 1873, and that in persuance of the said resolution of June 10th, 1873, there were issued by the said mayor and city council of Parkersburg to the said firm of M. J. O'Brien and Brother, bonds of said city to the amount of ten thousand dollars, each dated on the first day of June, 1873, and payable to said M. J. O'Brien or order on the first day of June, 1893, with interest thereon at six per cent. per annum, payable half yearly, on the first days of June and December of each and every year, on the pre-
7 sentation of the *of the* half yearly coupons thereto attached, and each of said bonds purporting on its face to be issued by authority of said act of the legislature of West Virginia of December 15th, 1868. All of which will more fully appear by refer*an*ce to said bonds, which your oratrix is ready to produce when thereto required, an a copy of one of which, together with a copy of one of the coupons thereto attached, she herewith files and prays to be taken as part of this bill, marked Complainant's Exhibit I, B., No. 3.

Your oratrix further charges that the said bonds so issued to said firm were so endorsed by said firm as to make them deliverable to any bona fide holder for value, so as to entitle such holder to demand and receive payment thereof according to the tenor and effect of said bonds; and that your oratrix in good faith purchased and became the bona fide owner of said bonds to the amount of five thousand dollars, and now holds the same; and that George S. Brown, trustee*s* of his wife, Harriet Eaton Brown, both citizens of the State of Maryland, holds $5,000 of the said bonds; and that the same were purchased by said trustee for his said wife at the same time and under the same circumstances that the $5,000 bonds of the complainant, Isabella Brown, were purchased.

8 Your oratrix further charges that subsequently, on the 9th day of September, 1873, a resolution was passed by said mayor and city council reciting the performance by said firm of M. J. O'Brien and Brother of one of the conditions upon which they were entitled to the loan of the residue of the sum of $20,000 in said bonds, and directing the same to be loaned to them as soon as the remaining condition mentioned in the recommendation of said trustees should be complied with, as will appear from a copy thereof herewith filed, marked Exhibit I. B., No. 4.

Your oratrix states and charges that, in pursuance of said last-mentioned resolution, the remaining $10,000 of said bonds were issued to said firm in the same form as those issued under the previous resolution of said mayor and city council above referred to; and she is informed and believes, and believing, charges that the second issue of some was in like manner negotiated by said firm, and that the same are now held by bona fide holders for value. Your oratrix further charges that the payment of all of the said bonds, principal and interest, was secured by the deed of

trust executed to the said city of Parkersburg by the said M. J. O'Brien and W. S. O'Brien, partners, trading as M. J. O'Brien & Brother,
9 and their wives, and which deed is referred to in the resolution of
the said mayor and council, passed on the 10th day of June, 1873, and a copy thereof is herewith filed, marked Complainant's Exhibit I. B., No. 5.

Your oratrix further charges that on the 26th day of November, 1873, the said O'Briens, with their wives, executed to one Okey Johnson a deed of trust upon the real estate conveyed by the said deed above-mentioned in trust to indemnify one Thompson Leach, as the endorser upon a promissory note for the sum of three thousand dollars, made by the said M. J. O'Brien and Brother, and *and* acting by virtue of the power conferred upon him by said deed to him, the said Okey Johnson exposed the said real estate for sale at public auction, subject to the claims of the said city under said first-mentioned deed, on the 9th day of November, A. D. 1874, and sold the same to the said city of Parkersburg for the sum of three hundred dollars, and conveyed the same to said city by his deed, and duly certified copies of the said two last-named deed' are herewith filed, as part of this bill of complaint, marked Exhibits I. B., No. 6 & 7.

And your oratrix further charges that said City of Parkersburg
10 hath, since the said purchase, claimed the said real estate as being
the property of the city, and hath rented the same and is now claiming it and exercising to some extent rights of ownership over it.

Your oratrix further avers and charges that among the other property conveyed to the said city by the said deed to it from said M. J. O'Brien and others, were a large number of tools and machinery, to a great extent moveable and of very great value, as will more fully appear from the valuation of the same appearing in the said deed.

And your oratrix further avers that after the execution of the said deed to the said Okey Johnson, the said firm of M. J. O'Brien and Brother and the said M. J. O'Brien and W. S. O'Brien were adjudicated bankrupts by the district court of the United States for the district of West Virginia—and your oratrix craves leave to refer to the proceedings in said court for greater certainty as part of this bill—and an assignee of the said O'Briens was duly chosen and qualified, and he was permitted, without objection on the part of the said city, to take possession of the said moveable chattels, and make sale of the same.

Your oratrix further avers and charges that the said chattels were sold by the said assignee to various purchasers, and have been so
11 scattered that it would be impossible to follow and retake the same,
and that the same have been since greatly deterio'ated in value from the uses to which they have been put and other causes; and your oratrix is informed and therefore charges that some of said chattels were sold, subject to such claim of said city, while no such reservation was made as to others, but your oratrix is unable to procure the names of the purchasers so as to designate what portion of said chattels were sold subject to the claims of said city.

Further complaining, your oratrix avers and charges that the said City of Parkersburg continued to pay the interest upon all the said bonds to your oratrix and the other holders of the said bonds, as the same became due, until the maturity of the interest coupons which became due on the first of June, 1876, when the said city refused to pay the said coupons, and hath since paid no more interest, and now refuses to recognize the obligation of the said coupons and bonds, wrongfully and unlawfully pretending that the same were issued by the said city without lawful authority.

Further complaining, your oratrix shows unto your honors that 12 for some months past the said City of Parkersburg hath wholly neglected the said real estate and the improvements and fixed machinery upon the same, and the said buildings are now unoccupied and unprotected, lying open to the weather and to constant depredations, and no care whatsoever is used in the protection of the buildings and machinery, and your oratrix is informed and believes that many valuable parts of the machinery have thus been lost.

Further complaining, your oratrix avers that she is advised that the said deed of trust from the said O'Briens to the said City of Parkersburg was executed for the purpose of securing your oratrix and the other holders of the bonds and coupons mentioned therein, and that the said holders are the parties beneficially interested in the same, and that The City of Parkersburg was and still remains a trustee of all the real estate and chattels in said deed mentioned for your oratrix and other holders of said bonds.

And your oratrix is further advised that the said city, in equity and good conscience, was bound, under all circumstances, to care for the said property, and protect the title to the same for the benefit of cestuique 13 trust, and that it was especially bound in good conscience so to do inasmuch as it had induced your oratrix and others in good faith to become the purchases of the said bonds, as well in reliance upon the said deed as upon the credit of the said city, and it hath since fraudulently refused payment of the bonds and interest without any effort at restitution to the holders; and she is further advised that the said City of Parkersburg is by her conduct estopped to deny the validity of her indebtedness in the bill of complaint mentioned according to the tenor and effect of said bonds and coupons.

Your oratrix further avers and charges that the said City of Parkersburg was as such trustee under the obligation to interpose for the prevention of the sale of said chattels by the said assignee in bankruptcy, and the loss of the said chattels as the result of such sale and the delivery to the purchasers, and was also under obligation to place the property in the charge of some responsible custodian, and to do all such acts as were necessary to protect the same from depredation and the result of the weather; and your oratrix is advised and charges that in failing to exercise such care and in permitting such sale without proper interposition, the 14 said City of Parkersburg hath been guilty of gross violation of the duties assumed by it from its acceptance of the said deed, and hath become liable to account to your oratrix and the other holders of the said bonds for all loss and injury which hath occurred to said real estate and chattels by reason of such neglect.

And your oratrix is further advised that by reason of the manifest neglect and breaches of duty upon the part of said City of Parkersburg with respect to the said property, and of the failure of the said M. J. O'Brien and Brother, as well as the said City of Parkersburg, to pay the interest upon the said bonds as aforesaid, your oratrix and the other bona fide

owners of said bonds are entitled to the interposition of this honorable court, as a court of equity, for the care and protection of the said property, and to a decree for the sale of such of the personal property as remains upon the premises mentioned in the said deed to the City of Parkersburg, and for the sale of the real estate, and a decree against the City of Parkersburg requiring it to account for and pay over to the holders of the bonds all such monies as have been lost to your oratrix and the other owners of said bonds resulting from such neglect and breaches of
15 duty, and requiring the said city also to account for and pay to your oratrix and such other holders any balance which may remain due to them after the application to the payment of all sums which may result from such sales since accounting. And your oratrix is further advised that she is remediless by the course of the common law, and relievable only in a court of equity, where such matters are properly cognizable and relievable.

To the end therefore that the said City of Parkersburg, the said M. J. O'Brien and P. F. O'Brien, his wife, William S. O'Brien and Jane C. O'Brien, his wife, and J. S. McCuer, the assignee of said bankrupts, all of Wood County and State of West Virginia and district aforesaid, may answer the premises, and that a receiver may be appointed to take charge of the property above mentioned, or what remains of the same, and that a trustee may be appointed to make sale thereof, and that the proceeds of sale may be distributed among the bona fide owners of such bonds and coupons, and that the said City Parkersburg may be decreed and required to account for and pay over to your oratrix and other holders of said bonds and coupons the value of such of said chattels as have been lost
16 or sold as aforesaid, and for such loss and injury as have resulted by reason of such neglect of duty on the part of said city in the care and custody of the property, and may also account for and pay over all such rents and profits as have been received by said city from said property; and that the said City of Parkersburg and the said M. J. O'Brien and W. S. O'Brien may be required to pay to your oratrix and such other owners of the said bonds any deficiency in the principal and interest thereof which may remain after the payment of the sums resulting from the sales and accounting aforesaid, or that the said City of Parkersburg may be decreed to pay the said bonds and coupons according to the tenor thereof, and especially that a decree may be passed for the payment of the over due coupons upon the said bonds, and that your oratrix may have such other and further relief as the nature of the case and equity and good conscience may require—

May it please your honors to grant unto your oratrix the writ of subpœna to be addressed to the said City of Parkersburg, the said M. J. O'Brien, William S. O'Brien, P. F. O'Brien, Jane C. O'Brien, and J. S. McCuer, of said State of West Virginia and said district aforesaid, requir'ng them to be and appear in this honorable court by a day to
17 be named to answer the premises and abide by and perform such decree as may be passed in the premises, and also the writ of injunction to be directed to said City of Parkersburg, enjoining and strictly prohibiting it, its officers, and agents from making sale of any part of said

real or personal property mentioned in the said deed of trust from said O'Briens to said city until the further order of this honorable court.

And as in duty bound, &c.

ISABELLA BROWN.

Charles Marshall,
Wm. A. Fisher,
W. W. Van Winkle,
Solicitors for Complainant.

United States of America,
District of Maryland, sct:

I, Robert Lyon Rogers, an United States commissioner in and for said district, do hereby certify that on the 16th day of November, A. D. 1876, before me personally appeared Isabella Brown, and made oath in due form of law that the matters and facts stated in the foregoing bill are true to the best of her knowledge, information, and belief.

[seal.] ROB'T LYON ROGERS,
U. S. Commissioner for Maryland.

18 Isabella Brown
vs.
The City of Parkersburg.

It is agreed that the bill and other proceedings in this case shall be amended by altering the allegation of the bill so as to allege that the complainant, I. B., is owner of $5,000 of the bonds mentioned in the bill, and that George I. Brown, trustee of his wife, Harriet Eaton Brown, both citizens of the State of Maryland, holds $5,000 of the said bonds, and that the same were purchased by said trustee for his said wife at the same time and under the same circumstances that the $5,000 bonds of the complainant, I. B., were purchased. It is further agreed that the answer of the city already filed shall be taken as an answer to the bill so amended, and that all the other proceedings shall remain unchanged by said amendment. It is also agreed that the said amendment may be written upon or annexed to the original bill as filed, and that *and that* said bill so amended shall stand and be taken as having been originally filed as it appears after being so amended.

W. W. VAN WINKLE,
Of Counsel for Complainant.
C. C. COLE,
Att'y for The City of Parkersb'g.
D. H. LENOARD,
For all the O'Brien Def'ts.

19 Exhibit I. B., No. 1, referred to in the foregoing bill, is in the words and figures following, to wit:

Regular Meeting, *Tuesday May* 13, 1873.

Present, his honor the mayor and Mess. Farrow, Kirkpatrick, Stahlman, Stephenson, and Smith, councilmen.

* * * * * * *

Pursuant to a resolution adopted by the city council April 22d, 1873, the trustees of the city loan (acting by virtue of an act of the legislature of West Virginia passed December 15, 1868) presented their report in writing in the words and figures following, to wit:

MAY 13*th*, 1873.

At a meeting of the trustees of the Manufacturing and Building Loan of Parkersburg.

Present, Jas. W. Dils, Sam'l Stewart, Jacob B. Jackson, J. N. Camden, and W. N. Chandler.

James W. Dils was appointed president p. t.

Ordered, that the resolution made in regard to the recom'endation of the loan of $20,000 on the 30th day of April, 1873, be modified and changed so as to read as follows:

Whereas M. J. O'Brien and W. S. O'Brien, composing the firm 20 of M. J. O'Brien and Brother, are desirous of obtaining a loan of bonds of the city under and by authority of an act of the legislature of West Virginia, passed December 15, 1868, for manufacturing purposes, to the amount of $20,000, for the purpose of aiding them in the erection of a foundry and machine works in the city of Parkersburg; and whereas, for the purpose of errecting these works they have bought of Mrs. Joanna Wait, widow of Walton Wait, deceased, and also from her as the guardian of Bettie C. Wait, infant heir of Walton Wait, deceased, lot No. 80, in said city, on Kanawha street, being 85 by 170 feet, and have received a conveyance from her of said lot, both as the widow of said Walton Wait and as the guardian of said Bettie C. Wait; and whereas it appears by a schedule of personal property of said M. J. O'Brien and Brother, verified by affidavit, and now in the hands of the city attorney, that said M. J. O'Brien and Brother are the owners of $15,000 worth of personal property in their works, a' Volcano, free of incumbrance: We therefore recom'end to the city council of Parkersburg, upon the said M. J. O'Brien and W. S. O'Brien and their wives executing a deed of trust to the said city on the said $15,000 worth of personal property, as well as upon the said lot No. 80, the city council 21 to take from Mrs. Joanna Wait, or some one for her, bank stock, with power of attorney to dispose of the same, or solvent bonds to the amount of $5,000 as security; that the said Joanna Wait, guardian, will obtain from the circuit court of Wood County within two years authority to convey to M. J. and W. S. O'Brien the said lot No. 80 for and on behalf of said ward, and when such authority is obtained and said deed made said stock or bonds to be given up, then the city council may deliver to said M. J. and W. S. O'Brien, upon the deposit of the aforesaid collaterals, $10,000 of said city bonds, and when said M. J. and W. S. O'Brien have put a building or buildings on said lot ready for the roof, costing not less than $8,000 when completed, shown by bills rendered and authenticated for same to the council, and when said Joanna Wait, guardian of said Bettie C. Waite, by the authority of said circuit court of Wood County, has conveyed for and on behalf of her said ward the said lot No. 80, free of incumbrance, to said O'Brien Brothers, or made a further deposit of bank stock or bonds to the amount of $8,000, under the conditions aforesaid, as security that she will obtain such authority within two years from

22 the date hereof and make said *said* conveyance, which shall be held by said city as security for the payment of said bonds and interest until said deed is made by authority of said court, then said city council may deliver to said M. J. O'Brien and brother the remaining $10,000 of said bonds. And said city council shall take as a further security for the payment of said bonds and interest from said M. J. O'Brien and Brother, to be deposited with the city treasurer, their insurance policies, amounting to $14,500, transferred to the said city, on their machinery, stock, &c., at Volcano, and when their buildings on said lot are completed and their mach'e'y therein erected, then said M. J. O'Brien & Brother shall have the whole insured to the amount of $15,000, and keep the same insured for the benefit and security of said city, on account of said loan.

(Signed) JAS. W. DILS.
SAM'L STEWART.
J. N. CAMDEN.
J. B. JACKSON.
W. N. CHANCELLER.

On motion, the trustees adjourned.

JAS. W. DILS, *P't.*

Teste: W. N. CHANCELLLER, *Sec'y.*

23 Upon the incoming of said report of the trustees of the manufacturing and building loan, the city attorney presented to the council a trust deed executed by the said O'Brian & Brother, which is accepted and ordered to be recorded. Whereupon it is resolved that upon the execution of the trust by M. J. O'Brian and Brother, the clerk is authorized to issue im'ediat'ly $10,000, part of the city bonds agreed upon by the resolution of the 22d of April, 1873.

On motion adjourned.

C. S. DESPARD, *Mayor.*

W. H. MCKINNEY, *Cl'k.*

I hereby certify that the foregoing is a correct and true copy from the records of the city council of the city of Parkersburg. Witness my hand this 22d day of August, 1876.

THOS. P. BUTCHER, *Clerk.*

STATE OF WEST VIRGINIA,
Wood County, ss:

I, Cyrus Hall, presiding justice of the county court of Wood County, do hereby certify that Thos. P. Butcher, who signed the foregoing certificate, is clerk of the city of Parkersburg, and the keeper of the records of the council of the said city, and his attestation is in due form. Witness my hand this day of December, 1876.

24 CYRUS HALL, *P. C. C.*

STATE OF WEST VIRGINIA,
County of Wood, ss:

I, William Hatcher, clerk of the county court of Wood County, do hereby certify that Cyrus Hall, who signed the foregoing certificate, was duly elected and qualified, and holding his office as presiding justice of said court at the time of such signing.

Given under my hand and the seal of said court this day of December, 1876.

[SEAL.] WILL. HATCHER,
Clerk of Wood Co. C't.

Complainant's Exhibit I. B., No. 2, referred to in said bill, is in the words and figures following, to wit:

REGULAR MEETING, *June* 10, 1873.

Present, his honor the mayor and Councilmen Farrow, Kirkpatrick, Logan, Stalhman, and Smith.

The following order relative to the city loaning $20,000 of its bonds to M. J. O'Brien & Bro. for manufacturing purposes was, on a vote of the council, adopted, to wit:

25 Whereas an act of the legislature of West Virginia, passed December 15, 1868, under certain conditions therein specified authorized the mayor and council of the city of Parkersburg to issue *to issue* the bonds of the said city to an amount not exceeding $200,000, for the purpose of lending the same to manufacturers carrying on business in or near said city; and whereas by an election held in accordance with said act in the city of Parkersburg, on the 17th day of April, 1879, by W. H. Smith, A. L. Pedro, and Thompson Leach, conductors, and S. L. Addison and Charles Rhodes, clerks, persons duly authorized to hold said election to take the sense of the voters of said city, whether they would concur in authorizing said loan, at which election four hundred and forty-one votes were cast for authorizing said loan and nineteen votes against the same; and whereas M. J. O'Brien and Brother, as will appear by reference to a former order of the city council of the city of Parkersburg, have applied for a loan of $20,000 of said bonds so authorized, and under the conditions so imposed by the said act of the legislature and former orders with reference thereto, the council have determined to lend to said M. J. O'Brien & Bro. bonds to the amount of $20,000; and whereas
26 James W. Dils, Samuel Stewart, J. N. Camden, J. B. Jackson, and W. N. Chanceller, the trustees of said manufacturing loan, as provided for in said act, have recom'ended the said loan of $20,000 to said M. J. O'Brien & Bro., under the conditions imposed in their report on file with the clerk of the said council, and duly recorded in the records of said council; and by said report it appears that when M. J. O'Brien & Bro. (M. J. O'Brien & W. S. O'Brien) and their wives execute a deed of trust to said city on the $15,000 worth of personal property mentioned in said recom'endation, as well as upon lot No. 80 in the city of Parkersburg, and also deposit with the city treasurer $5,000 in solvent bonds or bank stock, with power to dispose of the same, as collateral security, that Mrs. Joanna Wait, guardian of Bettie C. Wait, will within two years from the date of said recom'endation obtain from the circuit court of Wood County authority as such guardian to convey to said M. J. & W. S. O'Brien said lot No. 80 for and on behalf of said ward, the city council may deliver to said M. J. O'Brien & Bro. $10,000 of said bonds; and whereas the deed of trust so recom'ended is here presented to the council, as well as

27 five thousand dollars of the capital stock of the Second National Bank issued to Walton Wait, now deceased, with power of attorney to dispose of the same, executed by S. S. Cook, administrator of Walton Waït, deceased, to be deposited with the city treasurer, as also $14,500 in insurance policies, properly transferred, to be deposited with the city treasurer as further security: It is ordered that said security be, and the same is hereby, declared satisfactory. And that it is further ordered that $10,000 of the bonds of the city, properly signed by the mayor and clerk of the city council, be delivered to said M. J. O'Brien and Brother forthwith, under the conditions of and in accordance with the act of the legislature passed December 15, 1868, and the orders made September 6, 1870, and April 22, 1873, made and intended to be made by authority of said act of the legislature, and to be controlled by and construed according to its provisions. And it is further ordered, that when said deed is made to lot No. 80, by Mrs. Joanna Wait as aforesaid, the said S. S. Cook, administrator, may take up said $5,000 bank stock.

On motion, council adjourned to June 11 inst.

C. S. DESPARD, *Mayor.*

W. H. McKINNEY, *Clerk.*

28 I hereby certify that the foregoing is a correct and true copy from the records of the city council of the city of Parkersburg.

Witness my hand this 22d day of August, 1876.

THOS. P. BUTCHER, *Clerk.*

STATE OF WEST VIRGINIA,
Wood County, ss:

I, Cyrus Hall, presidi'g justice of the county court of Wood County, do certify that Thomas P. Butcher, who signed the foregoing certificate, is clerk of the city of Parkersb'g, and the keeper of the decrees of the council of said city, and his attestation is in due form.

Witness my hand this 8th day of December, 1876.

CYRUS HALL, *P. C. C.*

STATE OF WEST VIRGINIA,
Wood County, ss:

I, William Hatcher, clerk of the county court of Wood County, do hereby certify that Cyrus Hall, who signed the foregoing certificate, was duly elected and qualified, and holding his office as presiding justice of said court at the time of such signing.

Given under my hand and the seal of said court this day of December, 1876.

WILL HATCHER,
Clerk Wood Co. C't.

29 Complainant's Exhibit I. B., No. 3, is in words and figures following, to wit:

(Copy.)

No. 21.] $500. [No. 21.

This is to certify that The City of Parkersburg is indebted to M. J. O'Biren and Bro., or order, in the sum of five hundred dollars, payable on the first day of June, in the year one thousand eight hundred and ninety-three, in the city of Parkersburg, on the surrender of this certificate, with interest thereon in the interval, at the rate of six per centum per annum, payable semi-annually in the city of New York, on the first days of June and December of each and every year, on the presentation of the respective half yearly coupons thereto attached. This certificate is issued by authority of the act of the general assembly of the State of West Virginia passed December 15, 1868.

In testimony whereof the mayor and council of the said city of Parkersburg have caused this certificate to be sealed with the corporate seal, attested by the signature of the mayor and clerk, at the city of Parkersburg aforesaid, in the State of West Virginia, this 1st day of June, in the year 1873.

[SEAL OF THE CITY.] C. S. DESPARD, *Mayor.*
W. H. McKINNEY, *Clerk.*

30 *Specimen of the coupons attached to the bond.*

Coupon No. 40. Bond No. 41.

The City of Parkersburg, West Virginia, will pay the bearer, in the city of New York, on the first day of June, 1893, fifteen dollars, for six months' interest on certificate of manufacture's' loan.

W. H. McKINNEY, *Clerk.*

Complainant's Exhibit, marked I. B., No. 4, is in the words and figures following, to wit:

REGULAR MEETING, *Tuesday, September* 9, 1873.

Present, the mayor and Councilmen Burk, Farrow, Hughes, Smith, and Van Winkle.

On motion, the following order was made, viz:

"It appearing to the satisfaction of the council that M. J. O'Brien and Brother have their building, which, when completed, will cost more than eight thousand dollars, now up, ready to be roofed, and have therefore complied with the recom'endation of the manufacturers' loan and the former order of the council in that respect, it is ordered that as soon as Mrs. Joanna Wait, or some one for her, shall deposit with the city treasurer bonds to the
31 amount of $8,000, or bank stock, with power of attorney to dispose of the same, as collateral security that she will obtain within two years from the 13th of May, 1873, the authority from the circuit court of Wood County to make, for and on behalf of her ward, Bettie C. Wait, a deed to said M. J. O'Brien and Bro. for lot No. 80 in the city of Parkersburg, that the mayor of the city of Parkersburg is directed to deliver, properly signed by himself and attested by the clerk of the council, the remaining $10,000 of the bonds of the city of Parkersburg, as provided for by former orders of this council." Upon a call of the council, the vote was unanimous in favor of the order as above.

On motion, adjourned.

C. S. DESPARD, *Mayor.*

W. H. McKINNEY, *Clerk.*

I hereby certify that the foregoing is a correct and true copy from the records of the city council of the city of Parkersburg.

Witness my hand this 22d day of August, 1876.

THOS. P. BUTCHER, *Clerk.*

STATE OF WEST VIRGINIA,
Wood County, ss:

32 I, Cyrus Hall, presiding justice of the county court of Wood County, do hereby certify that Thomas P. Butcher, who signed the foregoing certificate, is clerk of the city of Parkersburg and the keeper of the records of the council of said city, and his attestation is in due form.

Witness my hand this 8th day of December, 1876.

CYRUS HALL, *P. C. C.*

STATE OF WEST VIRGINIA,
County of Wood, ss:

I, William Hatcher, clerk of the county court of Wood County, do hereby certify that Cyrus Hall, who signed the foregoing certificate, was duly elected and qualified and holding his office as presiding justice of said court at the time of such signing.

Given under my hand and the seal of said court this day of December, 1876.

WILL. HATCHER,
Clerk Wood Co. C't.

Complainant's Exhibit I. B., No. 5, is in words and figures following, to wit:

O'Brien Bros. to city of Parkersburg. Trust.

This deed, made the 13 day of May, A. D. 1873, by M. J. O'Brien
and P. F. O'Brien, his wife, and W. S. O'Brien and Jane C.
33 C. O'Brien, his wife, parties of the first part, and Okey Johnson,
trustee, party of the second part, witnes'eth that for and in consideration of one dollar in hand paid by the said trustee to the parties of the first part, the receipt whereof is hereby acknowledged, the said parties of the first part hereby grant unto the party of the second part all, &c., of the following property, to wit: All that certain lot of ground situate on Kanawha street, in the city of Parkersburg, known as lot No. 80 on the plat of said town, and being the same lot conveyed by Joanna M. Wait, guardian of Bettie C. Wait, and Joanna M. Wait in her own right, to the said parties of the first part, by deed dated the 12th day of May, 1873, and all the personal property mentioned in Schedule A and hereunto annexed and made part and parcel of this deed, said property now situated at Volcano, in the county of Wood, and valued at fifteen thousand and forty $\frac{38}{100}$ dollars, which said last-named property is permitted to remain in the possession of the parties of the first part, and to be removed from Volcano aforesaid and placed in the building or buildings to be errected by
said parties on the lot aforesaid untill the same shall be required
34 by the party of the second part upon being made as hereinafter
specified, that is to say: Whereas an act passed December 15, 1868,

by the legislature of West Virginia, authorizing the mayor and city council of the city of Parkersburg to lend its bonds for manufacturing purposes, to which act refer*a*nce may be had for a more explicit understanding of the provisions; and whereas the parties of the first part have negotiated with the said city for a loan of its bonds to the amount of twenty thousand dollars according to the provisions set forth in an ordinance passed by the said city council the 22d day of April, 1873, whereby it is, among other things, provided that if the parties of the first part shall punctually pay the interest on the aforesaid sum of twenty thousand dollars and five per centum of the principal for sixteen years, the said parties of the first part shall be released from any further payment, which said ordinance was authorized under a former ordinance dated September 6th, 1870, to both of which ordinances refer*a*nce may be had for a fuller understanding thereof, and are made part hereof, which negotiation for the aforesaid loan of $20,000 of the bonds of the said city is made on the part of said city persuant to a rec-
35 om'endation in writing made by the trustees of said loan, as pro-
vided in said act of the legislature, to which recom'endation in writing refer*a*nce may be had for a fuller understanding thereof, and is made part hereof, in trust to secure the faithful performance by the parties of the first part, in their payment of the aforesaid interest on said twenty thousand dollars, and the payment of the five per centum of the principal as specified in the aforesaid ordinance passed the 22d day of April, 1873. And if any default shall be made herein, then the party of the second part, as trustee aforesaid, shall proceed to sell the property hereby conveyed persuant to the provisions of chapter 72 of the code of West Virginia, and the acts amendatory thereto.

Witness the following signatures and seals.

M. J. O'BRIEN. [SEAL.]
P. F. O'BRIEN. [SEAL.]
WM. S. O'BRIEN. [SEAL.]
JANE C. O'BRIEN. [SEAL.]

STATE OF WEST VIRGINIA,
County of Wood, ss:

On the 13th day of May, 1873, before me, a notary public in
36 and for said county, personally appeared M. J. O'Brien and W. S.
O'Brien, whose names are signed to the foregoing writing bearing date May 13th, 1873, and severally acknowledged the signing and sealing thereof to be their act and deed, for the purposes and objects therein set forth.

Given under my hand this date above written.

BARNA POWELL,
Notary Public.

STATE OF WEST VIRGINIA,
County of Wood, ss:

This day personally appeared before me, Sam'l L. Addison, a notary public in and for said county, P. F. O'Brien, wife of M. J. O'Brien, whose names are signed to the foregoing writing bearing date on the 13th day of May, 1873, and being privily examined by me apart from her said husband, duly acknowledged the foregoing writing to be her voluntary act and deed, and that she did not wish to retract it.

Given under my hand this 13th day of May, 1873.

SAM'L L. ADDISON,
Notary Public.

STATE OF WEST VIRGINIA,
County of Wood, ss:

37 I, Wesly H. Sharp, a notary public in and for the county aforesaid, do hereby certify that Jane E. O'Brian, wife of Wm. S. O'Brian, whose names are signed to the foregoing article of writing bearing date the 13th day of May, 1873, and being privily examined by me apart from her said husband, duly acknowledged the foregoing writing to be her voluntary act and deed, and that she did not wish to retract it.

Witness my hand this 15th day of May, 1873.

WESLY H. SHARP,
Notary Public.

EXHIBIT A.

1 ton defferential pat. pully & chain	$35 00
1 pipe-clamp	18 00
1 Horten's patent screw-chuck, 5-in. diam	15 00
1 “ “ “ “ 9 “ “	34 00
1 “ “ “ “ 15 “ “	52 00
1 ind. 4-jaw chuck, 15-in. diam. (h'y)	50 00
1 “ 4 “ “ 15 “ “ (l't)	42 00
1 8 x 14 engine (runn'g shop complete)	1,100 00
1 40 h. p. tub. boiler	1,125 00
1 steady-rest for 15-foot lathe	40 00
2 “ “ “ 12 “ “ @ 35	70 00
1 “ “ “ 11 “ “	30 00
1 “ “ “ 8 “ “	25 00
1 “ “ “ 6 “ “	20 00
38 1 milling machine	125 00
1 set planer centers	35 00
2 short boreing-bars	20 00
1 upright engine (12 h. p. complete)	250 00
3 large w. b. ladles, @ 15	45 00
4 3-in. shafts, flanges, cranks, &c., complete, $48	192 00
3 $2\frac{3}{8}$ “ “ “ “ 38	114 00
493 lbs. cast steel, @ 25	148 25
1 upright boiler (1st class)	400 00
333 lbs. lathe tools (steel), @ 40	133 20
19 steel dril's	7 60
23 lathe mandrills, @ 1.00	23 00
18 flat and cape chisels, at 1.00	18 00
59 taper-taps from $\frac{1}{8}$ to $1\frac{1}{2}$, @ 2.57	151 63
29 plug “ “ $\frac{1}{8}$ to 2“, @ 2.94	85 26
18 lathe combs, @ 75	13 50
2 $2\frac{1}{2}$ box-taps, @ 10.00	20 00
3 large blacksmith anvils	75 00
3 “ “ swedge blocks	20 00
1 ex. “ “ “ “	12 00

1 “ “ “ mandril	15 00
1 large knife for steam ham'er	4 50
1 “ pair blacksmith tongs (new)	7 00
46 pair large & small tongs, at 1.00	46 00
6 “ blacksmith fullers, @ 3.50	21 00
10 “ “ swedges, @ 3.50	35 00
1 “ crane	40 00
1 set “ mandrils	50 00
39 10 blacksmith fitting-chisels, at 2.50	$25 00
10 “ punches, @ 1.50	15 00
7 sledge-hammers, @ 4.00	28 00
3 hand “ @ 3.00	9 00
2 pair blacksmith calipers, @ 2.00	4 00
1 “ “ compass	1 25
4 steel “ try-squares, @ 1.50	6 00
4 “ fire-shovels, @ 75	3 00
4 steel “ flatters, @ 3.00	12 00
5 “ set-hammers, @ 1.50	7 50
15 pieces “ heading tools, @ 1.00	15 00
1 large iron crowbar	2 50
1 boiler-front complete	70 00
1 pres'ure pump & fixtures	25 00
1 7″ brass 500 lbs, pres'ure gauge	45 00
1 6-in. iron, 1,000 lb. “ “	35 00
1 large brass mercury gauge & fixtures	30 00
1 “ platform scale	20 00
440 lbs. boiler rivets, @ 8c	35 20
484 “ jumated 14″ plate iron, @ 9c	43 56
1 set stocks & dies, from 2″ to ⅜″	38 45
1 pair sheet-iron rollers	35 00
1 “ boiler roller (heavy.)	256 00
1 “ large sheet-iron sh'ars	12 00
4 pat. box vices	68 58
1 paral'el*l* pat. vice	5 00
1 set boiler-maker's tools	45 00
12 “ Stanwood pat. pipe-cutter	9 00
40 1 1-in. Stanwood pat. pipe-cutter	$7 00
1 15″ Merrill's “ “ ratchet drill	7 50
1 large R wrench	22 00
1 pr. large steel centers (for lathes.)	28 00
1 “ cylinder-be'ring bar	75 00
1 med. “ “ “	20 00
1 small “ “ “	15 00
1 30-in. face-plate (extra)	30 00
1 36″ fan (completed)	50 00
1 set (12) $\frac{5}{16}$ to 2″ lathe bolt-dogs	22 00
1 “ (12) ⅜ “ 4″ C. S. lathe carriers	25 00
100 2½ iron stop-cocks, @ 440 35% nett	440 00
21 3 “ “ “ brass plug @ 14.95	313 95
25 2½ “ “ “ 10	251 75
26 2½ brass “ “ 9	234 00

1	650 lb. steam hammer complete	1,475 00
1	lathe, 15 ft., shears, 30 swing on center	1,375 00
1	" 12 " " 24 " "	700 00
1	" 11 " " 18 " "	450 00
1	" 8 " " 18 " "	399 00
1	" 6 " " 18 " "	370 00
1	" 5 " " 14 " "	275 00
1	wood shair 10 " " 17 " "	200 00
1	planing machine 12 foot, 36 x 30	950 00
1	shaping machine	350 00
1	pipe-cutting machine	275 00
1	dull press, complete	250 00
	54 ft. 2⅛ line-shafting & 3 clutches	129 72
41	8 pat. adjustable hangers	66 48
	20 iron pulleys, sizes 14″ to 20″	120 00
1	em'ry machine & counter shaft, complete	35 00
1	large grindstone and fixtures	55 00
2	" show cases	60 00
1	Hall, Carrol & Co. iron safe	250 00

WEST VIRGINIA,
Wood County, ss:

Personally appeared before me, W. W. Van Winkle, a notary public in and for the county and in the State aforesaid, M. J. O'Brien, who upon his oath says that he is a member of the firm of M. J. O'Brien & Bro., and that he, with his brother, W. S. O'Brien, partners in trade under the firm name of M. J. O'Brien & Bro., own, free of all incumbrance, each and every article of property specified in the foregoing schedule hereto attached, and that each and every item therein mentioned is worth the sum set down in the margin of the schedule opposite to each and every item respectively, and that said property is now worth in the aggregate the sum of fifteen thousand dollars, and that the said property is now at Volcano, in the said county of Wood.

M. J. O'BRIEN & BRO.

Subscribed and sworn to before me this 13th day of May, A. D. 1873.

W. W. VAN WINKLE,
Notary Public.

42 WOOD COUNTY, CLERK'S OFFICE, *June 18th*, 1873.

The foregoing writing, bearing date on the 13th day of May, 1873, with the several certificates of acknowledgment thereof thereto annexed, together with Exhibit A, and the affidavit of M. J. O'Brien & Bro. thereto annexed, was this day received and admitted to record in the clerk's office aforesaid.

Teste:

WILL HATCHER,
C. W. C. C.

A copy. Teste:

WILL HATCHER,
C. W. C. C.

WEST VIRGINIA,
Wood County, Clerk's Office:

I, William Hatcher, clerk of the county court of Wood County, do certify that the foregoing writing, bearing date on the 13th day of May, 1873, is a true copy from the records in my office.

Witness my hand and the seal of said county court the 8th day of December, 1876.

WILL. HATCHER,
C. W. C. C.

WEST VIRGINIA,
Wood County, to wit:

I, Cyrus Hall, presiding justice of said county, do certify that 43 Will. Hatcher, who hath made the foregoing certificate, is the clerk of the said county court, duly elected, qualified, and acting as such, and that his foregoing attestation is in due form of law.

Witness my hand this 8th day of December, 1876.

CYRUS HALL, *P. C. C.*

STATE OF WEST VIRGINIA,
Wood County, ss:

I, William Hatcher, clerk of the county court of Wood County, do hereby certify that Cyrus Hall, esq., whose genuine signature is annexed to the foregoing certificate, is president of said county court, and as such, presiding justice of said county court, duly elected, qualified, and acting as such.

Witness my hand and the seal of said court this 8th day of December, 1876.

[SEAL.] WILL. HATCHER,
C. W. C. C.

Complainant's Exhibit I. B., No. 6 is in the words and figures following, to wit:

M. J. O'Brien & Bro. to Thompson Leach.

This deed, made this 26th day of November, 1873, between M. J. O'Brien and Permelia F. O'Brian, his wife, and W. S. O'Brien 44 and Jane C. O'Brien, his wife, of Parkersburg, West Virginia, of the first part, and Okey Johnson, of said city and State, of the second part, witnesseth, that for and in consideration of the sum of ten dollars in hand paid, the receipt whereof is hereby acknowledged, the said parties of the first part have granted, bargained, and sold, and by these presents do grant, bargain, and sell, and convey unto the said Okey Johnson the following described property, to wit: All that certain lot of ground in the city of Parkersburg and State aforesaid, being part of out lot No. 116 in said city, and the buildings and appurtenances thereon, bounded and described as follows, to wit: Beginning at the junction of Kanawha street and Philips Court alley, thence running with a line of said street a southeasterly direction forty-two feet and six inches to J. S. McKee's line; thence back and parallel with Avey street one hundred and seventy feet

with McKee's line to his back corner and Van Winkle's line; thence in a straight line with McKee's and Van Winkle's line forty-two feet six inches to the alley; thence with the line of said alley in a westerly direction one hundred and seventy feet to the beginning, being the same lot of ground conveyed to said M. J. & W. S. O'Brien by James Smith and wife, by deed dated
45 June 9th, 1873, and now of record in said county of Wood. Also a certain other lot of ground situated in said City of Parkersburg, with the buildings and appurtenances thereon, situated on Kanawha street in said city, and known as lot No. 80, being the same lot conveyed by Abraham Payne and wife, and Elias Booker and wife, to Walton Wait, by deed, dated March 17th, 1864, which deed is recorded in deed book No. 21, p. 584, of the records of Wood County, and being the same lot conveyed by Joanna M. Wait, widow of Walton Wait, dec'd, and Joanna M. Wait, as guardian of Bettie C. Wait, to said M. J. & W. S. O'Brien, by deed, dated the 12th day of May, 1873, to both of which deeds referance is had for more complete description of said lots of ground. To have and to hold to the said Okey Johnson, his successors and assigns forever, the two lots of ground aforesaid, the buildings thereon, and the appurtenances, in trust, to secure, indemnify, and save harmless Thompson Leach, of the said county of Wood, who has this day endorsed a note signed by M. J. O'Brien and W. S. O'Brien, partners in trade as M. J. O'Brien and Bro., by the said firm name of M. J. O'Brien and Bro., whereby ninety days after date they promise to pay to the order of said Thompson Leach the sum of
46 three thousand dollars, value received, negotiable, and payable at the Parkersburg National Bank. Now, if the said M. J. O'Brien and Bro. shall pay said note at its maturity, or any renewal or renewals thereof for the said sum of three thousand dollars, or for any part thereof, as it or they shall mature, then no sale shall be made by virtue of this trust; but if the said M. J. O'Brien and Bro. shall make default, and permit said three-thousand-dollar note, or any renewal or renewals thereof, either for the whole of said sum of three thousand dollars, or any part thereof, to be protested and lie under protest for the period of fourteen days, then it shall be the duty of said Okey Johnson, trustee, and he is hereby directed to sell the property hereby conveyed to pay such note. Any sale made under this deed shall, in all respects, be governed by the provisions of chapter seventy-two of the code of West Virginia, and the acts of the legislature of said State amendatory thereof. Witness the following signatures and seals the day and year first above written.

M. J. O'BRIEN. [SEAL.]
P. F. O'BRIEN. [SEAL.]
W. S. O'BRIEN. [SEAL.]
J. C. O'BRIEN. [SEAL.]

47 STATE OF WEST VIRGINIA,
Wood County, ss:

I, Dave D. Johnson, a notary public in and for the county aforesaid, do hereby certify that M. J. O'Brien and P. F. O'Brien, his wife, and Wm. S. O'Brien and Jance C. O'Brien, his wife, whose names are signed to the foregoing writing, bearing date on the 26th day of November, 1873, have this day severally acknowledged the same before me in my county aforesaid, and the said P. F. O'Brien, wife of M. J. O'Brien, and the said J.

C. O'Brien, wife of W. S. O'Brien as aforesaid, personally appeared before me and being by examined privily and apart from their said husbands, and having the said writing fully explained to them, they, the said P. F. O'Brien and J. C. O'Brien severally acknowledged the same, and declared that they had willingly executed the same and did not wish to retract it. Given under my hand this 26th day of November, 1873.

DAVE D. JOHNSON,
Notary Public.

WOOD COUNTY, CLERK'S OFFICE,
December 1, 1873.

48 The foregoing writing, bearing date on the 26th day of *of* November, 1873, with the certificate of the several acknowledgements thereof thereto annexed, was this day received and admitted to record in the clerk's office aforesaid.

Teste.

[SEAL.] WILL. HATCHER, *C. W. C. C.*

A copy. Teste:

WILL. HATCHER, *C. W. C. C.*

WEST VIRGINIA,
Wood County Court, Clerk's Office:

I, William Hatcher, clerk of the county court of Wood County, do hereby certify that the foregoing writing, bearing date the 26th day of November, 1873, is a true copy from the records in my office. Witness my hand and the seal of said county court this 8th day of December, 1876.

WILL. HATCHER, *C. W. C. C.*

WEST VIRGINIA,
Wood County, to wit:

I, Cyrus Hall, presiding justice of said county, do hereby certify that Will. Hatcher, who hath made the foregoing certificate, is the clerk of said county court, duly elected and qualified and acting as such,
49 and that his foregoing attestation is in due form of law.

Witness my hand this 8th day of December, 1876.

CYRUS HALL, *P. C. C.*

WEST VIRGINIA,
Wood County, Clerk's Office:

I, William Hatcher, clerk of the county court of Wood County, do hereby certify that Cyrus Hall, esq., whose genuine signature is annexed to the foregoing certificate, is the president of said county court, and as such, the presiding justice of said county court, duly elected and qualified and acting as such.

Witness my hand and the seal of said court this 8th day of December, 1876.

WILL. HATCHER,
Clerk Wood Co. C't.

Complainant's Exhibit I. B. No. 7 is in words and figures following, to wit:

Okey Johnson, trustee, to City of Parkersburg.

This deed, made this 8th day of December, 1874, between Okey John-
son, trustee, of the first part, and The City of Parkersburg, of the second
part, witnesseth: Whereas M. J. O'Brien and Parmelia F. O'Brien,
50 his wife, and W. S. O'Brien and Jane C. O'Brien, his wife, did, on
the 26th day of November, 1873, execute to the said Okey John-
son their deed for part of outlot No. 116, in the city of Parkersburg, and
appurtenances. Also, lot No. 80, in said city, to secure Thompson Leach,
as endorser of a promissory note made by them in their firm name of M.
J. O'Brien and Brothers, on that day, payable at the Parkersburg National
Bank, ninety days after date, for the sum of three thousand dollars, and
to secure said endorser for any renewal or renewals of said note. And
whereas said note for the entire sum of $3,000 was renewed from time to
time, the said Thompson Leach from time to time and still being the
endorser thereof, and the said note, on the 24th day of August, 1874, was
protested for non-payment, and the said note laid under protest for more
than 14 days, and the said trustee was, by the said Leach, ordered to
sell said property under said trust-deed, and, after advertising said prop-
erty as the statutes require, by posting notices of the sale thereof, thirty
days prior to said sale, one at the front door of the court-house, one on each
of the lots to be sold, and two notices posted at two other public places
in the county of Wood, and notices served on each of said grantors,
51 the undersigned trustee did, on the 31st day of October, 1874, at
the front door of the court-house, the day appointed for said sale,
sell the said part of outlot No. 116, with its appurtenances, to said Leach
for the sum of $2,550, and on that day adjourned the sale of lot No. 80 to
the 9th day of November, 1874, when he, at the same place, at public
auction, sold lot No. 80 and its appurtenances, subject to a trust thereon
in favor of the city of Parkersburg for $20,000, for the sum of three hun-
dred dollars to the city of Parkersburg, which was the highest bid the
said trustee could obtain therefor. Now, therefore, this deed witnesseth
that for and in consideration of the sum of three hundred dollars by the
said city of Parkersburg in hand paid to the said trustee, the said Okey
Johnson, trustee as aforesaid, hath bargained, sold, granted, and conveyed,
and by these presents doth bargain, sell, grant, and convey unto the said
city of Parkersburg, all that lot of ground, with the buildings therein,
and appurtenances, situated in the said city of Parkersburg, on Kanawha
street, and known as lot No. 80, being the lot of ground conveyed by
Abraham Payne & wife and Elias Bowen and wife to Walton Wait by
deed dated March 17, 1864, and recorded in deed-book No. 21, page 584
of the records of Wood County, and afterwards, to wit, on the
52 12th day of May, 1873, conveyed to M. J. O'Brien and W. S.
O'Brien by Joanna M. Wait in her own right, and as guardian of
Bettie C. Wait, to both of which deeds refer*a*nce is hereby made for a
more particular description of said land. To have and to hold the said
lot of ground, buildings, and appurtenances subject to the lien of the said
city aforesaid, unto the city of Parkersburg and its successors forever.
And the said party of the first part, trustee as aforesaid, warrants spe-
cially the property hereby conveyed.

Witness the following signatures and seal.

OKEY JOHNSON, [SEAL.]
Trustee.

WOOD COUNTY COURT, *Clerk's Office, 24th December*, 1874.

The foregoing writing, bearing date 8th December, 1874, was this day duly acknowledged before me by Okey Johnson, trustee, whose name is signed thereto, and admitted to record in the clerk's office aforesaid.

Teste:

WILL. HATCHER,
C. W. C. C.

A copy from the record.

Teste:

WILL. HATCHER,
C. W. C. C.

53 WEST VIRGINIA,
Wood County, Clerk's Office:

I, William Hatcher, clerk of the county court, do hereby certify that the foregoing writing, bearing date on the 8th day of December, 1874, is a true copy from the record in my office.

Witness my hand and seal of said county court this 8th day of December, 1876.

WILL. HATCHER,
C. W. C. C.

WEST VIRGINIA,
Wood County, to wit:

I, Cyrus Hall, presiding justice of said county, do hereby certify that Will. Hatcher, who hath made the foregoing certificate, is the clerk of said county court, duly elected, qualified, and acting as such, and that his attestation is in due form of law.

Witness my hand this 8th day of Dec'r, 1876.

CYRUS HALL, *P. C. C.*

STATE OF WEST VIRGINIA,
Wood County Court, Clerk's Office:

I, William Hatcher, clerk of the county court of Wood County, do hereby certify that Cyrus Hall, esq., whose genuine signature is annexed to the foregoing certificate, is the president of said county court, and as such, presiding justice of said county court, duly elected, qualified, and acting as such.

54 Witness my hand and *and* the seal of said county court the 8th day of December, 1876.

WILL. HATCHER,
Cl'k Wood Co. C't.

And on the same day, to wit, on the eighth day of December, in the year 1876, there was issued out of the clerk's office of the circuit court of the United States for the district of West Virginia, in accordance with the prayer of the complainant's bill, a subpœna in chancery, directed to the marshal of the district of West Virginia, in the words and figures following, to wit:

Subpœna in chancery.

UNITED STATES OF AMERICA,
District of West Virginia, ss:

55 The President of the United States of America to the marshal of the district of West Virginia, greeting:

You are hereby commanded to summon The City of Parkersburg, M. J. O'Brien, William S. O'Brien, P. F. O'Brien, Jane C. O'Brien, and J. G. McCuer, citizens of and residents in the State of West Virginia, if they be found in your district, to be and appear in the circuit court of the United States for the district of West Virginia aforesaid, at rules to be held in the clerk's office of said court at Parkersburg, on the first Monday in January next, to answer a certain bill in chancery filed and exhibited in said court against them by Isabella Brown, a citizen of and resident in the State of Maryland hereof; they are not to fail, under the penalty of the law thence ensuing, and have then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the United States, this 8th day of December, A. D. 1876, and in the 101st year of the Independence of the United States of America.

Attest:

W. H. HATCHER, *Clerk.*

MEMORANDUM.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of January, 1877, otherwise the said bill may be taken pro confesso.

W. H. HATCHER, *Clerk.*

56 At which mentioned first Monday of January, in the year of our Lord 1877, being the day of the return of the foregoing writ, came the marshal of the district of West Virginia, to whom the foregoing writ was in form directed, and made return thereof in words and figures following, to wit:

Executed as to the City of Parkersburg, by handing an attested copy of the within subpœna to John E. Remley, mayor of the said city, in the county of Wood, district of West Virginia, this 8th day of December, 1876, he, the said Remley, residing and being found therein; executed December 8th, 1876, on M. J. O'Brien and P. F. O'Brien, by handing an attested copy to each of them; also, on the same day, handed an attested copy to J. G. McCuer; and, also, on the 11th day of December, 1876, by handing an attested copy to each of the defendants, William S. O'Brien and Jane C. O'Brien, in said district.

H. P. O'NEAL,
Deputy for H. Slack, U. S. Marshal.

And on another day, to wit, on the 31st day of January, 1877, at pleas continued and held on that day, the following order was entered:

ISABELLA BROWN, COMP.,
vs.
THE CITY OF PARKERSBURG ET AL., DEF'TS.

This day C. C. Cole, esq., entered his appearance of record for
57 the defendant The City of Parkersburg.

And on another day, to wit, on the 23rd day of May, 1877, the defendant The City of Parkersburg filed its demurrer, which demurrer is in words and figures following, to wit:

To the honorable the judges of the circuit court of the United States for the district of West Virginia, in equity sitting:

The demurrer of The City of Parkersburg, one of the defendants to the bill in equity, filed in said court by Isabella Brown against said defendant and others.

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill contained to be true in such manner and form *and form* as the same are therein and thereby set forth and alleged, does demur thereto, and for cause of demurrer shows, that said complainant has not, by her said bill, made such a case as entitles her in a court of equity to any relief touching any of the matters therein complained off, because:

First. The act of the legislature of West Virginia referred to in said bill was and is in excess of the constitutional power of the said
58 legislature, and was and is void, and any and all acts attempted to be done in virtue of its authority are void, and the alleged bonds of this defendant mentioned in the said bill are null and void and of no effect in law or equity.

Second. The matters set forth in the bill are insufficient to charge this defendant as a trustee of the property therein mentioned.

Third. The matters as set forth in the bill even if all true are insufficient to charge this defendant in any manner whatever in a court of equity.

Fourth. Complainant has a plain and adequate remedy at law for the matters set up in the bill.

Wherefore, and for divers, other good causes of demurrer appearing in said bill, this defendant does demur thereto, and prays the judgment of this honorable court, whether it shall be compelled to make any other further or other answer to the said bill, and humbly prays to be hence dismissed, with their reasonable costs in this behalf sustained.

CITY OF PARKERSBURG,
By Counsel.

SCOTT and COLE,
Sol. for City of Parkersburg.

59 I, C. F. Scott, an attorney practicing in the circuit court of the United States for the district of West Virginia, do hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

C. F. SCOTT.

PARKERSBURG, W. VA., *May* 7, 1877.

UNITED STATES OF AMERICA,
District of West Virginia, to wit:

John E. Remly, the mayor of the city of Parkersburg, being duly sworn, says upon oath, that the foregoing demurrer is not interposed for delay.

J. E. REMLY.

Subscribed and sworn to before me this 23d of May, 1877.

W. H. HATCHER,
Cl'k C. C. U. S., C. W. Va.

60 And on the same day, to wit, on the 23d day of May, 1877, the defendant The City of Parkersburg filed in the clerk's office of this court its answer and exhibits, which are in words and figure' following, to wit:

Answer.

To the honorable the judges of the circuit court of the United States for the district of West Virginia:

The separate answer of The City of Parkersburg to a bill in equity filed in said court by Isabella Brown, against this respondent, M. J. O'Brien, William S. O'Brien, P. F. O'Brien, Jane C. O'Brien, and J. G. McCluer.

This respondent now and at all times saving and reserving unto itself all and all manner of benefit that may or can be had by way of exception to said bill, on account of the misrecitals, mistakes, and insufficiencies therein contained and appearing, for answer to so much and such facts of said bill as it is advised is material or necessary for it to make answer unto, answering, says:

61 That it admits the passage by the legislature of West Virginia, on the 15th day of December, 1868, but does not admit that the said act is correctly recited in said bill, nor does this respondent admit as true any of the legal conclusions or results drawn from said act and stated in said bill, but refers to said act itself as a correct statement thereof.

Respondent denies the allegation of said bill, that the said act was submitted to and concurred in by a majority of the qualified voters of said city, at an election held for that purpose on the 17th day of April, 1869. On the contrary, respondent says that the said act never was ratified or concurred in by a majority of the qualified voters of said city, by their voting for or against the same, at any election held for that purpose on the 17th day of April, 1869, or at any other time whatever. It appears by reference to Complainant's Exhibit No. 2, that, at the election held on the 17th day of April, 1869, which was the only election ever held in said city for the purpose of voting upon the question of authorizing the issuing of bonds under said act, that only 441 persons voted at said election in favor of authorizing the issuance, which number, respondent says, is less than a majority of the qualified voters of said city at the date of said election, but that the number of qualified voters at that time was at least 1,300.

62 Said Exhibit No. 2 also shows, and respondent alleges the fact to be so,
that the said election was held for the purpose of ascertaining whether
a majority of the qualified voters of the city would authorize the issue of
bonds generally under the provisions of said act to the amount of $200,000,
and not whether they would concur in the issuing of the particular bonds
mentioned in the bill, as is obviously required and intended by the
terms and provisions of the said act. And respondent says that it is advised
and believes, and so answers, that the question of authorizing the
issuing of the bonds mentioned in the bill never was submitted to the
qualified voters of the said city at any time, and concurred in by a majority
of them as required by said act, and that said bonds mentioned in said bill
were not issued in accordance with the provisions and requirements of
said act, and are void and of no binding force upon this respondent in law
or equity, and are void for want of authority to issue the same.

Respondent, further answering, says that by section 8, of article 10, of
the existing constitution of West Virginia which went into operation on
the 22d day of August, 1872, it is provided that no county, city,
63 school district, or municipal corporation, except in cases where such
corporations have already authorized their bonds to be issued, shall
hereafter be allowed to become indebted in any manner or for any purpose
to an amount, including existing indebtedness, in the aggregate exceeding
five per centum on the value of the taxable property therein to be ascertained
by the last assessment for State and county purposes previous to the
incurring of such indebtedness, nor without, at the same time providing
for the collection of a direct annual tax sufficient to pay annually the interest
on such debt, and the principal thereof, within and not exceeding thirty-four
years: Provided, That no debt shall be contracted under this section
unless all questions connected with the same shall have been first submitted
to a vote of the people, and have received three-fifths of all the votes cast
for and against the same. And that said section of said constitution was
in full force and operation at the time of the issuing of the bonds mentioned
in said bill, and that the issuing of said bonds had not been authorized
prior to the 22d day of August, 1872, when said section of said constitution
became operative, and that said section would and does
64 govern in the issuing of said bonds, and that they were issued in
violation of said section, in that the payment thereof was not provided
for at the time of issuing thereof, as required by said section, and all
questions connected with the same were not first submitted to a vote of the
people, as therein required, and said bonds are void.

Respondent, for further answer to said bill, says that it is advised and believes, and upon such its advice and belief answers, that the said act referred to in said bill, passed by the legislature of West Virginia on the 15th day of December, 1868, was and is in violation of the constitution of the said State of West Virginia, and is void, and conferred no right or power on the mayor or city council of Parkersburg, or the trustees therein mentioned, to issue and loan said bonds.

And respondent further says that at the time of the passage of the act aforesaid, it had no property or fund out of which it could pay any such bonds as are mentioned in said act or said bill, and has now none, except such funds as it is or may be authorized by law to raise by taxation upon the persons and property within its jurisdiction. And respondent

is advised and believes that the bonds contemplated by the said act,
65 and mentioned in said bill, are in aid and furtherance of a private
enterprise for individual gain and profit, and not for a public purpose in any sense connected with the government of said State, or any portion or locality thereof, or of said city. And that it is in excess of the constitutional power of the said legislature to authorize taxation for the purpose of paying the bonds mentioned in said act and in said bill unless that power is clearly given and conferred on the said legislature by the terms of the constitution of the State. And respondent avers that no such power was or is given or conferred on said legislature by the constitution of the State in force at the time of the passage of said act, or the one now in force. And respondent refers to the said constitution as published by authority of the said State, and asks that they be read with this answer. And respondent says that it is informed, and so answers, that said act mentioned in said bill was and is null and void for want of power in the legislature to pass and enact the same, and that all acts done under and in persuance thereof are null and void, and that said bonds mentioned in said
bill, issued under the pretended authority conferred by said act, are
66 null and void, and of no force or virtue at law or in equity.

Respondent is advised and believes, and so answers, that said bonds are void because they were issued in violation of section 9, of article 10, of the constitution of West Virginia in force at the time, said bonds were issued which provides that the legislature may, by law, authorize the corporate authorities of cities, towns, and villages, for corporate purposes, to assess and collect taxes. And that said constitutional provision is a negative prohibition against assessing and collecting taxes for any other than a corporate purpose, and that said bonds being for a private and not for a corporate purpose, are void.

Respondent does not know of its own knowledge, and neither admits nor denies the allegation of said bill, that vacancies occurred in said trustees mentioned in said act, and were filled by the appointment of other persons named in the bill, but leaves the complainant to make such proof of such allegation as she may be advised.

Respondent admits that the persons mentioned in said bill of complainant, as trustees of said loan, claiming to act as such, did recom'end
67 to the mayor and city council of Parkersburg to loan the bonds of
said city authorized to be issued under said act to M. J. O'Brien and W. S. O'Brien, copartners, under the firm name and style of M. J. O'Brien and Brother, to the amount of twenty thousand dollars, to aid said firm in conducting a manufacturing business in said city of Parkersburg; it is also true that said trustees in their said recom'endation set forth and declared the security to be given for said loan of said bonds to said firm.

Respondent also admits that the said mayor and city council of Parkersburg resolved to make said loan of said bonds to said firm of O'Brien and Bro., as stated in said bill, and also admits the passing of the resolution of the 13th of May, 1873, referred to in said bill, and that the security therein mentioned was given before the issuing of said bonds, and also admits the giving of the deed of trust mentioned in Complainant's Exhibit No. 1, and that additional security mentioned in the resolution of June 10, 1873, was given, and that said deed of trust was delivered and recorded on the 18th day of June, 1873, and that, in persuance of the said resolution of June

10, 1873, there were issued by the said mayor and city council
68 of Parkersburg to the said firm of M. J. O'Brien and Bro., bonds
of said city to the amount of ten thousand dollars, each dated on the 1st day of June, 1873, but not payable to M. J. O'Brien as stated in said bill, but to M. J. O'Brien and Brother, on the 1st day of June, 1893 (but respondent does not admit any legal conclusion in relation to the from or effect of said bonds), with interest thereon, at six per cent. per annum, payable half yearly on the first days of June and December of each and every year, on presentation of the half-yearly coupons thereto attached.

Respondent for further answer says that it appears in and by said bill and exhibits that the said bonds were loaned to the said M. J. O'Brien and Brother, by the said mayor and city council of the said City of Parkersburg, and respondent is advised and so answers that said act does not purport to authorize said mayor and council to loan said bonds, but only authorizes them to issue the same, and provides that the trustees may loan them, and said loan having been made by persons not authorized by the act to make the same, it is void for that cause.

Respondent does not know and does not admit that the said bonds
69 so issued were endorsed by said firm at all, and especially the respondent does not admit that they were so endorsed as to make them deliverable to any bona fide holder for value so as to entitle such holder to demand and receive payment thereof, according to the tenor and effect thereof, even if said bonds were valid or binding at all. Nor does respondent admit that the complainant purchased and became the bona fide owner of said bonds to the amount of ten thousand dollars, and leave her to make such proof of such allegation as she may be advised; but even if she be a bona fide purchaser and holder of them for value, respondent is advised that if the same were void ab initio for want of power in the legislature to pass the said act, or from irregularities in the proceedings subsequent thereto looking to the issue of said bonds, complainant is chargeable with notice of all the facts, circumstances, omissions, and proceedings that render said bonds invalid and acquire no rights against respondent by virtue of paying value for said bonds.

Respondent admits the passing of the resolution authorising the issuing
of the additional $10,000 of said bonds and the issuing thereof as
70 set out in said bill, but denies its responsibility on the account
thereof on the grounds and for the reasons herein set forth. Respondent does not know and cannot answer who holds said bonds.

Respondent admits that the trust deed of the 13th of May, 1873, was executed for the purpose of securing to the said city the payment of the principal and interest of the said bonds, but that the said property mentioned in said deed is not nor was it at the date of said deed, in any sense, adequate security for the payment of said bonds and interest; the personal property, machinery, &c., was valued higher than its real value, and was not worth anything like the sum mentioned in the recommendation of the persons denominated trustees of said loan, and the value of the real estate mentioned in said deed was not as valuable as was represented at the time of the execution of said deed, and owing to the rapid decline in that class of property in the vicinity of Parkersburg during the years 1873 and 1874, the same is much less valuable as a security now than at the time of the execution of said deed.

71 Respondent also admits the execution by the O'Briens of the deed of trust in the said real estate to indemnify one Thompson Leach, as stated in said bill, and the sale of said property, and the purchase thereof by said city, at the price stated in said bill, but the same was sold and bought in subject to the supposed prior claim of the city on said property under its said deed of trust.

It is true, as stated in the said bill, that since the purchase at said sale under the Leach deed of trust respondent has rented the same, and offered to rent and exercised acts of posses'ion over it, and is still exercising acts of possession over it, but has not claimed to own the property or to have any claim to it, except the right to resort to it for indemnity for the payment of so much of said bonds, principal and interest, as respondent might pay or be liable to pay.

Respondent admits that the tools and some of the machinery mentioned in the deed of the 13th of May, 1873, were moveable, but denies that the same were worth anything like the sum mentioned in the deed, upon information and belief.

Respondent also believes that it is true that said firm of M. J.
72 O'Brien and Bro. adjudicated bankrupt after the execution of the
deed last aforesaid, and that the said J. G. McCluer was appointed the assignee in bankruptcy of said firm; but respondent denies, upon information and belief, that he was allowed to take charge of and sell the said moveable property without objection on the part of said city.

Respondent further answering, upon information and belief that after the execution of said last mentioned deed the said O'Brien and Brother purchased and placed in and upon the said property mentioned in said bill, considerable other tools and machinery not mentioned, or pretended to be conveyed by said deed of trust, and that the assignee in bankruptcy took possession of such as was not included in said deed of trust, and sold the same, and in doing so may have taken some that was included in the said deed and sold that also. But respondent, upon information and belief, answers, that if any was so sold by said assignee that was included in said deed of trust, it was sold by him subject to said deed of trust.

73 Respondent believes it to be true as *as* stated in said bill, that such of said articles of tools and machenery as were sold by said assignee were sold to various persons, but respondent does not know that they have been scattered or deterio'ated in value, or that it is impossible for the complainant to follow them if she be entitled to do so, and so does not admit the same.

It is true, as stated in said bill, that respondent paid the interest on said bonds up to June 1st, 1876, and has refused to pay any since that time, and still refuses and claims that it is not legally or equitable liable to pay the same. The first instalment of interest was paid to said city by said O'Brien and Brother.

Respondent denies the allegation of said bill, that for some months it has wholly neglected the said real estate, and the improvements and fixed machen'y upon the same, and that the same is unprotected, lying open to the weather, and to constant depredation, and no care whatever is used in the protection of the buildings or machenery, and that valuable parts of
the machene'y has been lost. It is true the buildings have been
74 unoccupied for some time, but good and reasonable care has been

taken of the same and the said machenery, and no depredations of moment have been committed, or any parts of said machenery lost, so far as respondent is informed and believes.

Respondent has tried to rent the property and realize something from the income thereof, to reimburse for the money it has paid out on said interest on said bonds, but has not succeeded in renting it, although it expended considerable money in advertising it for rent, except for a few months to F. B. Toothaker, for which he paid respondent $165.00 as rent for the time he occupied it.

Respondent is informed and believes, and so answers, that it is not chargeable with the care of said property, and certainly not at the suit of complainants, but, nevertheless, has taken as good care of the same as was possible under the circumstances, and has used all due dilligence to rent the same and realize from it something to indemnify it for its money expended in payment of interest on said bonds and other expenses attendant on issuing them, and taxes on said property, none of which it was under any obligation to do under the circumstances of the case.

75 Upon information and advice, respondent denies the allegation of said bill that the said deed of trust from O'Brien to The City of Parkersburg was executed for the purpose of securing the complainant and other holders of the bonds an' coupons mentioned therein, and that the said holders are the parties beneficially interested in the same. And that respondent was and remains a trustee of all the real estate and chattels in said deed mentioned for the complainant and other holders of said bonds, and that respondent was under all circumstances in equity and good conscience bound to care for the said property and protect the title to the same, for the benefit of certain que trust. And respondent denies that it induced said complainant, or any one else, to take said bonds, or any of them, or that it has done or committed any act to cause her to rely upon said deed of trust, or that it has fraudulently refused payment of the bonds or interest. On the contrary, respondent has paid out nearly three thousand dollars in interest on said bonds and taxes on said property to protect the title thereof, when it was in no wise bound to do so. And respondent
76 further answers, upon information and belief, that complainant is not entitled to stand in the relation of cestuy que trust to said property mentioned in said deed of trust to said city, and that respondent cannot be charged in the character of trustee of said property; that it is incompetent for it to act as trustee in such a matter wholly foreign to the purpose of its creation, and the charter of respondent and all acts amendatory thereof and supplemental thereto, found in the published laws of the States of Virginia and West Virginia, are hereby referred to and prayed to be read as part of this answer.

Respondent further says that, after it had paid out $, as interest on said bonds, it caused a certain lot of the tools and machinery mentioned in said deed of trust to said city to be advertised by said trustee and sold, to repay respondent what it had paid out, and at said sale respondent purchased said machinery at the sum of $, and the same was conveyed by said trustee to respondent. A copy of the bill of sale is filed herewith as part of this answer, marked No. 1. And respondent has sold a portion of the machinery so purchased by it for the sum of $909.06,
77 and the residue of said machinery is on said building in said real estate.

Respondent has paid, as interest on said bonds, expenses attending the issuing thereof and taxes on the property mentioned in said deed of trust, $2,687.98, and has received from all sources on account of said property $1,124.06, leaving due respondent $1,563.92, and respondent files herewith an itemized statement of account showing said balance, marked Exhibit No. 2.

Respondent also files herewith, as part of this answer, marked Exhibit No. 3, copies of all the entries and orders made of record by said city council in relation to said bonds so issued to said O'Briens, and in relation to said property mentioned in said deed of trust.

Respondents, on information and belief, denies that it was under any obligation to interpose to prevent the sale of any of said personal property mentioned in said deed of trust by the said assignee in bankruptcy, if any was so sold by him, which is not admitted, or to place the property in charge of some responsible custodian, or to do such acts as were necessary to protect the same from depredation and the result of the weather, but
while respondent insists that it was not and is not liable to protect
78 and care for said property, as charged in said bill, at the same time
respondent denies all charges of negligence in relation to the care of said property as laid in said bill, and answers that its care of said property has been as good and as effectual as it could be under the circumstances; that it has done all that could have reasonably been done to protect it, and as much as could have been required of it if it was liable to be charged with the care of said property as trustee. And it denies any liability whatsoever to complainant, or any other holder of said bonds, on account of the issuing of said bonds, the interest thereon, or on account of any of said property mentioned in said deed of trust, or the care, or alleged want of care thereof, or otherwise.

Respondent, upon information and belief, denies the power and jurisdiction of a court of equity to grant complainants any relief in the premises, and says that if the allegations of said bill were true, she has a plain and adequate remedy in a court of law.

Respondent denies the right of complainants to any decree against
79 it for any sum in any event, whether the court shall deem her
entitled to a sale of the property mentioned in said deed of trust or otherwise.

Respondent for further answer, says that if the court shall be opinion that it has any jurisdiction in the premises, or that the complainants is entitled to resort to said property for the payment of said bonds, or the interest thereon, respondent is willing to submit to any order to be made by said court in relation to the disposition of said property, upon the court pronouncing the said bonds void, and respondent not liable on account thereof. But in any order which the court may deem equitable, just, and proper to make in relation to said property in this cause, respondent prays that its interest in the premises may be protected, and that it may be decreed to receive out of the proceeds of any sale of said property that the court may think proper to make in this suit the said sum of $1,563.92.

And respondent, having fully answered, prays to be dismissed hence, and recover its costs, &c.

[SEAL OF CITY.]

CITY OF PARKERSBURG,
By J. E. REMLY, *Mayor*.

UNITED STATES OF AMERICA,
District of West Virginia, to wit:

80 John E. Remley, the mayor of The City of Parkersburg, the respondent mentioned in the foregoing bill, being duly sworn, says upon oath that he has heard read the said answer, and knows its contents; that the matters and things therein stated as of the knowledge of the respondent he knows to be true, and as to the matters therein stated upon the information and belief of the said respondent he believes to be true. And I have caused the seal of said city to be hereto affixed.

J. E. REMLEY.

Subscribed and sworn to before me this 23d day of May, 1877.

W. H. HATCHER,
Cl'k C. C. U. S., D. W. Va.

SCOTT and COLE,
Sol's for City of Parkersburg.

Exhibit No. 1, referred to in the above answer, is not found among the papers in this cause.

Exhibit No. 2, referred to in above answer, is in words and figures following, to wit:

81 *The Manufacturers' Loan, to M. J. O'Brien & Bro., in ac't with The City of Parkersburg.*

1874.					
Dec.	31.	For am't paid T. Leach on purchase-money		300 00	
1875.					
Jan'y	16.	" " " coupons, June interest		600 00	
"	"	" " " removing property from Volcano		33 27	
"	"	" " " machinery purchased at sal'		313 00	
"	"	" " " coupons	$300 00		
"	"	" " " O. Johnson for com'sions	55 05		
"	"	" " " insurance to Boreman & B.	150 00		
				505 05	
					1,751 32
March	6.	" " " advertising		50 80	
"	25.	" " " " in Pittsburgh Com'r.		30 00	
April	9.	" " " insurance		100 00	
1876.					
Jan'y	7.	" " " lock for shop		1 68	
"	"	" " " State & county tax for 1875		163 80	
					346 28
Feb'y	23.	" " " insurance		300 00	
March	29.	" " " F. Jenkins for work		75	
May	24.	" " " J. P. Vaughn & Co., rep'ng roof		71 64	
					372 39

1877.			
Feb'y 13.	" " " insurance	87 50	
" 27.	" " " State & county taxes for 1876.	130 49	
			217 99
			$2, 687 98

CONTRA.

1876.				
May 29.	By am't overp'd on insurance to B. & B....		50 00	
1877.				
April 24.	" am't received from sale of mach'y & t...		909 06	
1875.				
May 13.	" " " rent from Toothaker.	55 00		
July 29.	" " " " " "	110 00		
			165 00	
	Amount to balance..................		1, 563 92	
				$2, 687 98

82 Exhibit No. 3, referred to in above answer, is in words and figures following, to wit:

Exhibit No. 3.

At a special meeting of the city council of Parkersburg, held at the council chamber, on Tuesday, the 6th day of September, 1870:

Present, his honor the mayor, Messrs. Devlin, Prayer, Poole, McFarland, and Neal.

A communication having been received and read to the council from Messrs. M. J. O'Brien and Brother, in regard to the erection of a manufacturing establishment and marine railway within the city limits:

It was unanimously resolved that the council agree when the trustees of the improvement loan certify that the Messrs. O'Brien & Bro. have satisfactorily secured the bonds loaned to them and complied with the act of the legislature authorizing the loan of said bonds that they will release said parties from city taxation on their property to the amount of bonds invested in the same not exceeding twenty thousand dollars; provided,
however, the release shall extend so long as the said property shall
83 be used or operated as a manufacturing establishment and marine
railway, but not in any event to exceed twenty years.

* * * * * * *

On motion, the council adjourned.

W. J. HILL,
Mayor.

R. H. Stoutenborough,
Clerk.

REGULAR MEETING, *Tuesday, April* 22, 1873.

Present, his honor the mayor and all the councilmen.

* * * * * * *

Mr. Stephenson offered the following resolution:

Be it resolved by the mayor and council of the city of Parkersburg, that in the event of the firm of M. J. O'Brien and Brother taking from the city a loan of twenty thousand ($20,000) dollars of its bonds authorized under former resolution, dated September 6th, 1870, for manufacturing purposes, and paying punctually the interest thereon and five per cent. (5) of the principal for sixteeen years, the said firm be released from any further payments and the balance of said bonds be paid by the city, and the said M. J. O'Brien and Brother are released from
84 making a marine railway.

On a call of the council (Mr. Burk being excused from voting), Messrs. Farrow, Kirkpatrick, Logan, Stathman, Stephenson, and Smith voting in the affirmative, the chair declared the resolution adopted.

* * * * * * *

On motion, adjourned.

C. D. DESPARD,
Mayor.

W. H. McKINNEY,
Clerk.

MAY 13, 1873.

At a meeting of the trustees of the manufacturing and building loan of Parkersburg:

Present, James W. Dils, Samuel Stewart, Jacob B. Jackson, J. N. Camden, and W. N. Chancellor.

James W. Dils was appointed president pro tem.

Ordered, that the resolutions made in regard to the recommendation of the loan of $20,000 on the 30th day of April, 1873, be modified and changed so as to read as follows:

Whereas M. J. O'Brien and W. S. O'Brien, composing the firm of M. J. O'Brien and Brother, are desirous of obtaining a loan of the bonds
85 of the city, under and by authority of an act of the legislature of West Virginia, passed December 15, 1868, for manufacturing purposes, to the amount of $20,000, for the purpose of aiding them in the errection of a foundry and machine works in the city of Parkersburg; and whereas, for the purpose of erecting these works they have bought of Mrs. Joanna Wait, widow of Walton Wait, deceased, and also from her as the guardian of Bettie C. Wait, infant heir of Walton Wait, deceased, lot No. 80 in said city of Parkersburg on Kanawha street, being 85 by 170 feet, and have received a conveyance from her of said lot, both as the widow of said Walton Wait and as the guardian of said Bettie C. Wait; and whereas it appears, by a schedule of personal property of said M. J. O'Brien & Bro., verified by affidavit, and now in the hands of the city attorney, that said M. J. O'Brien & Bro., are the owners of $15,000 worth of personal property in their works at Volcano free of incumbrance:

We, therefore, rec'omend to the city council of the city of Parkersburg, upon the said M. J. and W. S. O'Brien and their wives, executing a deed of trust to the said city on the said $15,000 worth of personal 86 property, as well as upon the said lot No. 80, the city council to take from Mrs. Joanna Wait, or some one for her, bank stock, with power of attorney to dispose of the same, or solvent bonds to the amount of $5,000, as security that said Joanna Wait, guardian, will obtain from the circuit court of Wood County within two years authority to convey to M. J. and W. S. O'Brien, the said lot No. 80 for and on behalf of said ward; and when said authority is obtained, and said deed made, said stock or bonds to be given up, then the city council may deliver to said M. J. and W. S. O'Brien, upon the deposit of the aforesaid collaterals, $10,000 of said city bonds; and when said M. J. and W. S. O'Brien have put a building or buildings on said lot ready for the roof, costing not less than $8,000 when completed, shown by bills rendered and authenticated for same to the council, and when said Joanna Wait, guardian of said Bettie C. Wait, by the authority of the said circuit court of Wood County, has conveyed for and on behalf of her said ward the said lot No. 80 free of incumbrance to said O'Brien and Brother, or made a further deposit of bank stock or bonds to the amount of $8,000 under the conditions 87 aforesaid, as security that she will obtain such authority within two years from the date hereof, and made said conveyance, which shall be held by said city as security for the payment of said bonds and interest until said deed is made by authority of said court, then said city council may deliver to said M. J. O'Brien and Brother the remaining $10,000 of said bonds; and said city council shall take, as a further security for the payment of said bonds and interest, from said M. J. O'Brien and Brother to be deposited with the city treasurer, their insurance policies, amounting to $14,500, transferred to the said city on their machinery, stock, &c., at Volcano; and when their building' on said lot are completed, and the machinery thereon errected, then the said M. J. O'Brien and Brother shall have the whole insurred to the amount of $15,000, and keep the same so insurred for the benefit and security of said city on account of said loan.

(Signed) JAMES W. DILS.
" SAM'L STEWART.
J. N. CAMDEN.
J. B. JACKSON.
W. N. CHANCELOR.

On motion, the trustees adjourned.

Teste:

W. N. CHANCELLER, *Sec'y.*

88 Upon the incoming of said report of the trustees of the manufacturing and building loan, the city attorney presented to the counsel a trust-deed executed by the said O'Brien & Bro., which is accepted and ordered to be recorded, whereupon it is resolved that upon the execution of the trust by M. J. O'Brien & Bro., the clerk is authorized to issue im'ediat'ley $10,000, part of city bonds as agreed upon by the resolution of the 22d of April, 1873.

On motion, adjourned.

(Signed) C. S. DESPARD, *Mayor.*
W. H. McKINNEY, *Clerk.*

REGULAR MEETING, *May* 13, 1873.

Present, his honor the mayor, and Messrs. Farrow, Kirkpatrick, Stathman, Stephenson, and Smith, councilmen.

* * * * * * *

Persuant to a resolution adopted by the city council April 22d, 1873, the trustees of the city loan (acting by virtue of an act of the legislature of West Virginia, passed December 15, 1868), presented their report in writing in the words and figures following, to wit:

89 REGULAR MEETING, *June* 10, 1873.

Present, his honor the mayor, and councilmen Farrow, Kirkpatrick, Logan, Stathman, and Smith.

* * * * * * *

The following order relative to the city loaning $20,000 of its bonds to M. J. O'Brien and Bro., for manufacturing purposes, was on a vote of the council adopted, to wit:

Whereas an act of the legislature of West Virginia, passed December 15th, 1868, under certain conditions therein specified, authorized the mayor and council of the city of Parkersburg to issue the bonds of said city to an amount not exceeding $200,000 for the purpose of lending the same to manufacturers carrying on business in or near said city; and whereas by an election held in accordance with said act, in the city of Parkersburg on the 17th day of April, 1869, by Wm. H. Smith, A. L. Peadro, and Thompson Leach, conductors, and S. L. Addison and Charles Rhodes, clerks, persons duly authorized to hold said election, to take the sense of the voters of said city, whether they would concur in authorizing said loan, at which election four hundred and forty-one votes were cast for authorizing said
90 loan and nineteen votes against the same; and whereas M. J. O'Brien and Brother, as will appear by reference to former orders of the city council of the city of Parkersburg, have applied for a loan of $20,000 of said bonds so authorized, and under the conditions imposed by said act of the legislature and former orders with reference thereto, the council have determined to lend to said M. J. O'Brien & Bro. bonds to the amount of $20,000. And whereas James W. Dils, Samuel Stewart, J. N. Camden, J. B. Jackson, and Wm. N. Chancellor, the trustees of said manufactur'ng loan, as provided for in said act, have recommended the said loan of $20,000 to said M. J. O'Brien and Brother under the conditions imposed in their report on file with the clerk of said council, and duly recorded in the records of said council, and by said report it appears that when M. J. O'Brien and Brother (M. J. and W. S. O'Brien), and their wives, executed a deed of trust to said city on the $15,000 worth of personal property mentioned in said recommendation, as well as upon lot No. 80, in the city of Parkersburg, and also deposit with the city treasurer $5,000, in solvent bonds or bank stock, with power to dispose of the same as collateral security; that Mrs. Joanna Wait, guardian of Bettie C. Wait,
91 will, within two years from the date of said recommendation, obtain from the circuit court of Wood County, authority as such guardian to convey to the said M. J. and W. S. O'Brien said lot No. 80, for and on behalf of said ward, the city council may deliver to said M. J. O'Brien and Brother $10,000 of said bonds. And whereas the deed of trust so

recommended is here presented to the council, as well as $5,000 of the capital stock of the Second National Bank, issued to Walton Wait, now deceased, with power of attorney to dispose of the same, executed by J. S. Cook, administrator of Walton Wait, deceased, to be deposited with the city treasurer, as also $14,500 in insurance policies properly transferred, to be deposited with the city treasurer as further security, it is ordered that said security be, and hereby is, declared satisfactory; and that it is further ordered that $10,000 of the bonds of the city, properly signed by the mayor and clerk of the city council, be delivered to said M. J. O'Brien and Brother forthwith under the conditions of and in accordance with the act of the legislature passed December 15, 1868, and the orders made September 6, 1870, and April 22, 1873, made, and intended to be made, by authority of said act of the legislature, and to be controlled by and construed 92 according to its provisions. And it is further ordered, that when said deed is made to lot No. 80, by Mrs. Joanna Wait, as aforesaid the said S. S. Cook, administrator, may take up said $5,000 bank stock.

On motion, adjourned.

Adjourned meeting of June 10th, 1873.

Present, the mayor and Councilmen Farrow, Stathman, Stephenson, and Smith.

* * * * * * *

The following bills were seperately presented and considered, and on motion ordered to be paid out of the general fund.

* * * * * * *

Ohio Publishing and Manufacturing Co., Cincinnati, Ohio.

For printing the O'Brien bonds $65 00

(Signed) C. S. DESPARD, *Mayor*.

W. H. McKinney, *Clerk*.

Regular Meeting, *June* , 1873.

Present, his honor the mayor and Councilmen Farrow, Kirkpatrick, Logan, Stathman, and Smith.

* * * * * * *

93 On motion, it was ordered that the certificate of the supervisors, inspectors, and clerks of the election held April 17, 1869, under an act of the legislature of West Virginia, authorizing the city council to loan the bonds of the city for manufacturing purposes, be put on the record-book of the proceedings of this council, to wit:

We, the undersigned, having been first duly sworn, do hereby certify that we conducted the election held under authority of an ordinance passed by the mayor and city council of Parkersburg, upon the proposition to authorize the said city council to issue bonds of the said city to the amount of two hundred thousand dollars, to be loaned to manufacturers under the provisions of law and said ordinance. That said election was held according to law; that there were cast at said election four hundred and forty-one votes for said proposition to authorize said issue of bonds, and nineteen votes against the said proposition.

Given under our hands this 17th day of April, 1869.

(Signed) W. H. SMITH.
A. L. PEADRO.
THOMPSON LEACH.
SAML. L. ADDISON.
CHARLES RHOADS.

94 REGULAR MEETING, *September* 9, 1873.

Present, the mayor, and Councilmen Burke, Farrow, Hughes, Smith, and Van Winkle.

* * * * * * *

On motion, the following order was made, viz: It appearing to the satisfaction of the council that M. J. O'Brien & Bro. have their buildings which, when completed, will cost more than eight thousand dollars, now up and ready to be roofed, and have therefore complied with the recom-'endation of the manufacturers' loan, and the former orders of the council in that respect, it is ordered that as soon as Mrs. Joanna Wait, or some one for her, shall deposit with the city treasurer bonds to the amount of $8,000, or bank stock, with power of attorney to dispose of the same as collateral security, that she will obtain within two years from the 13th of May, 1873, the authority from the circuit court of Wood County to make for and on behalf of her ward, Bettie C. Wait, a deed to said M. J. O'Brien and Bro., for lot No. 80 in the city of Parkersburg, that the mayor of the city of Parkersburg is directed to deliver, properly signed by himself, and attested by the clerk of the council, the remaining
95 ($10,000) ten thousand dollars of the bonds of the city of Parkersburg, as provided for by former orders of this council.

Upon a call of the council, the vote was unanimous in favor of the order as above.

* * * * * * *

On motion, adjourned.

C. S. DESPARD, *Mayor*.

W. H. MCKINNEY, *Clerk*.

REGULAR MEETING, *January* 13*th*, 1874.

Present, his honor the mayor, and Councilmen Farrow, Hughes, Kirkpatrick, Stathman, Smith, and Van Winkle.

* * * * * * *

The chairman of the committee on manufacturers' loan reported that O'Brien and Brother, having deposited $600 to credit of the general fund, November 29th, 1873, to meet the December interest on the $20,000 loan of bonds to them, the mayor be directed to give O'Brien & Bro. receipt for the same

Mr. Hughes moved that the mayor, in conjunction with the committe' on manufacturers' loan, are hereby directed that when the deed
96 from the representative of Walton Wait, deceased, to M. J. O'Brien and Brother is legally made for in lot No. 80 on the original plat of the city, to deliver the bank stock and bonds now held by the city to the representatives of said Wait. Mr. Smith moved the follow-

ing amendment, which was accepted by Mr. Hughes, that the mayor and said committee are hereby empowered to make out and sign all necessary papers to complete the transaction, in accordance with the former acts of the council.

* * * * * * *

On motion, adjourned.

(Signed) C. S. DESPARD, *Mayor*.

W. H. McKINNEY, *Clerk*.

REGULAR MEETING, *January* 19, 1874.

Present, his honor the mayor, and all the councilmen.

* * * * * * *

The committee on manufacturers' loan presented the following:

To the Mayor and Council of The City of Parkersburg:

97 The undersigned, committee on manufacturers' loan, beg leave to submit the following report: That by reason of the removal of the personal property of M. J. O'Brien & Brother to Parkersburg, it became necessary to renew some of the insurance, and the same was renewed to the amount of $15,000, in accordance with their contract, as follows:

State Insurance Company	2,056 00
Franklin " "	3,084 00
State " "	1,090 00
German " "	1,635 00
Aetna " "	1,635 00
Peabody " "	2,750 00
Fire & Marine " "	2,750 00
Total	$15,000 00

The committee further report that the proper orders have been made touching the authority to make a deed; which orders accompany this report.

Respectful'y submitted.

(Signed) THOS. HUGHES,
W. W. VAN WINKLE,
Com'te'.

On motion, the report was received.

On motion, adjourned.

(Signed) C. S. DESPARD, *May'*.

W. H. McKINNEY, *Clerk*.

TUESDAY, *February* 24, 1874.

98 At a regular meeting of the city council of Parkersburg, held at the council chamber on the 24th day of February, 1874.

Present, his honor the mayor, Councilmen Dolan, Davidson, Campbell, Mitchell, Stathman, Smith, and Talley.

* * * * * * *

The following preamble and resolutions were offered, and after general discussion, were adopted:

Whereas Messrs. M. J. and W. S. O'Brien propose to give The City of Parkersburg additional deed of trust on their lot, with the foundry and fixtures thereon, adjoining lot No. 80, on which the city now holds a deed of trust to secure the loan heretofore made to them, on condition that the said former deed of trust, so far as it holds their personal property, be released, for reasons appearing to the council, and in accordance with the recom'endation of a majority of the trustees of said improvement loan now here filed, it is ordered that as soon as said Messrs. M. J. and W. S. O'Brien, with their wives, shall execute to Okey Johnson, trustee, a deed of trust, free of incumbrance on the said lot and foundry and fixtures adjoining lot No. 80, to further secure the city on account of said loan with like provisions, with the said former deed of trust, then Okey Johnson, trustee in
99 said former deed of trust, is ordered to release the personal property held in said former deed of trust, by executing a proper release therefore.

On motion, it was ordered that the deed of trust and release proposed by Messrs. M. J. and W. S. O'Brien be referred to the committee on manufacturers' loan, in conjunction with the mayor and city attorney, for examination and report at the next meeting.

On motion, the council adjourned.

WM. N. CHANCELLER, *Mayor*.

R. H. STOUTENBOROUGH, *Clerk*.

TUESDAY, *March 24th*, 1874.

At a regular meeting of the city council of Parkersburg, held at the council chamber, on the 24th day of March, 1874.

Present, his honor the mayor, Messrs. Dolan, Davidson, Campbell, Mitchell, Smith, Stathman, and Talley.

* * * * * * *

The committee on manufacturers' loan presented the following preamble and resolutions, which were, on motion, adopted:

It appearing from the records of the last council that Messrs. M.
100 J. O'Brien and Bro. have complied with the terms of the several orders granting them a loan of the city bonds in the sum of $20,000, and especially in so far as the procuring of the deed of in lot No. 80, and that thereupon the council directed that the bank stock and bonds now held by the city be returned to the personal representative of Walton Wait deceased, and appointed a committee for that purpose.

And it further appearing that such committee were unable to accomplish the duty imposed upon them, by reason of the want of time and the expiration of their respective terms of office, and now refuse to do upon the ground that their authority has ceased.

And it appearing that said securities are still in the possession of the city, and they should be returned to said personal representative, who has demanded the same:

Be it resolved that the mayor deliver to S. S. Cook, administrator of Walter Wait, deceased, said bank stock and bonds now on special deposit in the Parkersburg National Bank, and is hereby authorized to execute and deliver all necessary papers to complete the transaction, in accordance with the several orders of council made in relation thereto.

* * * * * * *

101 On motion, the council adjourned.

W. N. CHANCELLER, *Mayor*.

R. H. STOUTENBOROUGH, *Clerk*.

TUESDAY, *June 9th*, 1874.

At a regular meeting of the city council of Parkersburg, held at the council chamber on the 9th of June, 1874.

Present the mayor, Councilmen Dolan, Davidson, Mitchell, Smith, Stathman, and Talley.

Mr. Mitchell, from finance committee, reported the amount of funds in the general fund $547.39; that the coupons of manufacturers' loan, amounting to $600.80, had been paid by the city, the same having been presented to Messrs. M. J. O'Brien and Brother for payment, but were unable to pay them; coupons held by Gen'l J. J. Jackson, amounting to $, had been received and placed in the hands of the city serge'nt to be credited on city tax bills of 1874, the city allowing at the rate of 6 % untill tax bill is due; that a loan of $1,000 had been made and a note of $1,500 renewed.

102 On motion, report received and adopted; committee on manufacturers' loan stated that the amount due from Messrs. M. J. O'Brien and Bro. on the principal and interest due on the 1st in*ts.* had not been paid, that the coupon interest had been paid by the city, amounting to $600.80.

On motion, it was ordered, that the committee on manufacturers' loan be directed to call on Messrs. M. J. O'Brien and Brother, and inform them that they must make some arrangements to liquidate their indebtedness to the city.

* * * * * * *

On motion, adjourned.

W. N. CHANCELLER, *Mayor*.

R. H. STOUTENBOROUGH, *Clerk*.

The following claims were presented, allowed, and ordered to be paid by checks on treasurer:

Second National Bank coupons of manuf. loan	$300 00
W. W. Van Winkle	300 00
Expenses on coupons	88
Total	$600 80

TUESDAY, *June 23d*, 1874.

At a regular meeting of the city council of Parkersburg, held at the council chamber on Tuesday, June 23d, 1874:

103 Present, his honor the mayor, Messrs. Campbell, Dolan, Davidson, Stathman, Mitchell, Smith, and Talley.

* * * * * * *

Mr. Mitchell, from committee on manufacturers' loan, reported that

Messrs. M. J. O'Brien and Bro. had told him that they thought before another regular meeting of the council they would be able to pay the city the amount of interest the city had paid out for them.

On motion report received.

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On motion, council adjourned.

W. N. CHANCELLER, *Mayor*.

R. H. STOUTENBOROUGH, *Clerk*.

TUESDAY, *July 14th*, 1874.

At a regular meeting of the city council of Parkersburg, held at the council chamber on Tuesday, July 14, 1874:

Present, his honor the mayor, Messrs. Dolan, Mitchell, Davidson, Smith, and Talley.

* * * * * * *

104 Mr. Mitchell, from committee on manufacturers' loan, reported that he had been assured by the Messrs. M. J. O'Brien and Brother that would pay the interest due on their bonds before the next regular meeting.

* * * * * * *

On motion, the meeting adjourned.

W. N. CHANCELLER, *Mayor*.

R. H. STOUTENBOROUGH, *Clerk*.

NOVEMBER 10TH, 1874.

At a regular meeting of the city council of Parkersburg, held at the council chamber on Tuesday, the 10th day of November, 1874:

Present, his honor the mayor, Mess. Davidson, Dolan, Campbell, Mitchell, and Talley.

The mayor stated that he had consulted with J. B. Jackson in regard to the trust on the Messrs. O'Brien's property, and was advised by Mr. Jackson to have the property advertised and sold under the deed of trust, and had given instructions to Mr. Okey Johnson to have the matter attended to at once.

* * * * * * *

105 The following coupons were presented to the council, examined and found correct by Mr. Mitchell, and burnt in presence of the *the* council, to wit:

Manufacturers' loan, three hundred dollars.

* * * * * * *

On motion, the council adjourned.

W. N. CHANCELLER, *Mayor*.

OCTOBER 16, 1874.

At a meeting of the city council of Parkersburg, held at the council chamber on Friday, the 16th day of October, 1874:

Present, his honor the mayor, Messrs. Davidson, Dolan, Mitchell, Stathman, and Smith.

* * * * * * *

Mr. Mitchell, from the committee on manufacturers' loan, stated that Messrs. O'Brien & Bro. had gone into bankruptcy, and suggested that some one be appointed to represent the city at the meetings of creditors.

On motion of Mr. Stathman it was resolved that the mayor be authorized to represent the interests of the city at a meeting of the creditors of Messrs. M. J. O'Brien & Bro.

* * * * * * *

On motion, the council adjourned.

W. N. CHANCELLER, *Mayor.*

R. H. Stoutenborough, *Clerk.*

106 November 24th, 1874.

At a regular meeting of the city council of Parkersburg, held at the council chamber on Tuesday, the 24th day of November, 1874:

Present, the mayor, Messrs. Campbell, Davidson, Dolan, Mitchell, Smith, and Talley.

* * * * * * *

Mr. Mitchell stated to the council that the O'Brien foundry property had been sold under a lien held by Mr. Thompson Leach, and purchased by the city for the sum of three hundred dollars.

In explanation of the purchase, the mayor stated that he had taken advice from eminent counsel, and was advised to purchase the same for the city, as it would save litigation if the city purchased the property which was sold under the trust-deed held by Mr. Leach.

On motion of Mr. Talley, it was ordered that the action of the mayor be approved by the council.

* * * * * * *

The following claims were presented, allowed, and ordered paid by check on the treasurer:

* * * * * * *

J. G. McCuer, for expense tax bill on O'Brien property..........	$33 27
Okey Johnson " purchase of O'Brien property......................	$300 00

On motion, council adjourned.

107 W. N. CHANCELLER, *Mayor.*

R. H. Stoutenborough, *Clerk.*

December 8*th*, 1874.

At a regular meeting of the city council of Parkersburg, held at the council chamber on Tuesday, the 8th day of December, 1874.

Present, the mayor, Messrs. Campbell, Dolan, Mitchell, Smith, and Talley.

* * * * * * *

The deed prepar*r*ed by Mr. Okey Johnson for the purchase of the O'Brien property, under the deed of trust held by Mr. Thompson Leach, was presented to the council by Mr. Okey Johnson, and placed in the hands of the mayor for examination and approval of the city attorney.

* * * * * * *

On motion, adjourned.

W. N. CHANCELLER, *Mayor.*

TUESDAY, *December 8th*, 1874.

At a regular meeting of the city council of Parkersburg, held at the council chamber on Tuesday, December 8th, 1874.

Present, the mayor, Messrs. Campbell, Dolan, Mitchell, Smith, and Talley.

108 Coupons of the manufacturers' loan, amounting to three hundred dollars having been paid, examined, and found correct, and ordered to be filed for future reference.

* * * * * * *

On motion, adjourned.

W. N. CHANCELLER, *Mayor*.

TUESDAY, *December 22d*, 1874.

At a regular meeting of city council of Parkersburg, held at the council chamber on Tuesday, the 22d day of December, 1874:

Present, the mayor, Messrs. Campbell, Dolan, Mitchell, Smith, Stathman, and Kelley.

* * * * * * *

The mayor informed the council that there had been a sale of the machinery on which the city held a trust, at the O'Brien machine shop, which sale amounted to about twenty-three hundred dollars, the amount due the city under the trust at the present time; that there would be a sale on the 23d inst., under the bankrupt law, and it might be necessary for the city to expend a small amount for securing the property for the city.

On motion of Mr. Mitchell, it was ordered that the mayor be au-
109 thorized to attend the sale and act for the best interest of the city.

On motion, adjourned.

W. N. CHANCELLER, *Mayor*.

The followin' bill of sale was ordered to be spread upon the minutes of this meeting:

This bill of sale, made this 15th day of December, 1874, between Okey Johnson, trustee of the first part, and The City of Parkersburg, of the second part.

Whereas M. J. O'Brien and wife, and W. S. O'Brien and wife, did, on the 18th day of May, 1873, execute to the undersigned trustee, the party of the first part, a deed of trust, which is recorded in deed-book No. , page 378, of the records of the deeds of Wood County, West Virginia, to which deed and schedule A thereto attached reference is had, conveying to the said trustee lot No. 80 in the city of Parkersburg and its appurtenances, and also all the personal property described in schedule A, which is annexed to and made part of said deed to secure to said city the prompt payment of the interest semi-annually on $20,000 bonds loaned to M. J. O'Brien and Brother, as set out in said trust-deed, and also five per centum
each year of the principal of said twenty thousand dollars, and if
110 default should be made in the payment of said five per centum of
the principal, or the interest on the said bonds as they became due, said trustee was required to sell said property, or sufficient thereof to pay the same; and whereas the said M. J. O'Brien and the said W. S. O'Brien did fail to pay both the June and December coupons due on said bonds in

the year 1874, and one thousand dollars, the five per centum on the principal, due on the first of June, 1874, the said five per cent. of principal, the interest coupons, and interest, and expense removing personal property from Volcano, and the costs of sale and commissions, amounting to $2,342.80, and being required by the city authorities of the city of Parkersburg, the said trustee advertised the said property in said trust-deed and scedule mentioned, the personal property consisting of steam-hammer, boiler, rollers, anvils, boilers, engines, planing-machine, lathes, blowers, &c., &c., &c., to be sold at the machine works of M. J. O'Brien and Bro., on the 15th day of December, 1874, and said property being advertized in exact accordance with the law for thirty days prior to said sale, the undersigned did, on the said 15th day of December, 1874, commencing at 2 o'clock
111 p. m., sell to the City of Parkersburg, said city bidding highest therefore, under and by virtue of said trust-deed, offering each piece of said property separately, to wit, one steam-hammer, @ $500.00; one set of boiler-rollers, $38; three anvils, $21.00; one boiler attached to building, $495; one engine, $310; one large planing-machine, $510; one line of shafting, including pulleys, &c., $100; one small lathe, No. 1, $150; one lathe, No. 2, $195; one blower, $22; amounting, in all, to $2,341; that being within one dollar and eighty cents of what was due, the said trustee did not sell any more property.

Now, this bill of sale made the day and year aforesaid, witnesseth that for and in consideration of the sum of $2,341, which, less $90.05 costs and commissions, the said city has credited on the debt of the said M. J. O'Brien & Bro., the said trustee, party of the first part, hath sold, and by these presents doth sell and transfer to the said city of Parkersburg the said steam-hammer, boiler-rollers, boiler, anvils, engine, planeing machine, line of shafting, lathe No. 1 and lathe No. 2 and blower, to have and to hold unto the said city forever. Witness the following signature and seal.

OKEY JOHNSON, *Trustee.* [SEAL.]

112 Debt due on principal Dec. 15, 1874	$1,000 00
Interest 6 months and 15 days	32 50
Coupons June 6, 1874	600 00
Interest on same	18 75
Coupons due Dec. 1, 1874	600 00
Interest due	1 50
Removing property	35 00
Commissions & expenses of sale	55 05
Total amount	$2,342 80

(Signed) OKEY JOHNSON, *Trustee.*

On motion, adjourned to meet on Saturday, January 16th, 1875.

J. W. MITCHELL,
Acting Mayor.

The following claims were presented, allowed, and ordered to be paid by check on treasurer.

* * * * * * * *

T. Murphy, coupons of manufacture's loan	$300 00

JANUARY 5, 1875.

At a special meeting of the city council of Parkersburg, at the council chamber, on the 5th day of January, 1875.

Present, the mayor, Messrs. Dolan, Davidson, Mitchell, and Smith.

* * * * * * *

113 The following claims were presented, allowed, and ordered paid by check on the treasury.

* * * * * * *

Okey Johnson, commissions on trust sale	$55 05

* * * * * * *

On motion, the council adjourned.

(Signed) W. N. CHANCELLOR, *Mayor.*

JANUARY 18th, 1875.

At a meeting of the mayor and councilmen-elect of the city of Parkersburg for the ensuing year, held at the council chamber on Monday evening, January 18th, 1875.

* * * * * * *

Mr. Poole moved that the committee on manufacturers' loan be requested to report the condition of the O'Brien shops to the next regular meeting.

On motion adjourned.

C. H. SHATTUCK, *Mayor.*

W. H. MCKINNEY, *Clerk.*

TUESDAY, *January 12th,* 1875.

At a regular meeting of the city council of Parkersburg, held at the council chamber on Tuesday, January 12th, 1875.

114 Present, the mayor, Messrs. Dolan, Davidson, Campbell, Mitchell, and Talley.

On motion of Mr. Mitchell, it was ordered that the action of the mayor in purchasing tools and machinery, &c., at the O'Brien & Bro. sale, held on the 24th of December, 1874, a list of which will be found recorded below, be approved, and it is further ordered that notes be given to the assignee, Mr. J. G. McCuer, in accordance with the decision of the judge.

The following is a list of the machi'ry, tools, &c., purchased by the mayor at the assignee sale, as returned by J. G. McCluer, assignee, subject to deed of trust held by the city;

1 2-inch pipe-cutter	175 00
1 16-f't lathe, centre shaft & hanger	625 00
1 11 " " shears, & counter-shaft	250 00
1 wood lathe	31 00
5 lathe-chucks, @ $25	125 00
222½ lbs. of lathe tools, at 14½c. per lb	32 27
32 lbs. " " " 15	4 80
1 differential pulley	9 00
5 vices, at $13.00	65 00
Lot of lathe-reams, @ 26c	5 04

22 " mandrils, 11c	2 42
4 " cutters, $2	8 00
31 ft. of 8-in. galvanized pipe	67 00
3 forges complete, @ $3.75	11 25
1 crane and fixtures	11 25
115 62 p'r tongs, 22 swedges, 18 bottom swedges, 10 fullers, 10 chissels, 14 heading-tools, 6 set-hammers, 8 mandrils, 6 sledges, and 2 hand-hammers	105 00
1 cast-iron furnace	15 00
1 p'r sheet-iron rollers	7 00
6 p'r (large) sheet-iron shears	4 10
1 large boreing-bar; 1 small, 1 drill press boreing-bar	15 00
1 set of tap-pipes, from 2 in. to ¼; 8 pipe-taps, 16 reamers	20 00
25 plug-taps	3 25
1 pipe-vice	2 25
8 tap-wrenches, at 25c. each	2 00
1 p'r plane centres	5 25
1 plane-auger	25
Total	$1, 601 14

The following piece of machen'y was purchased by the mayor, for which a demand note was given:

To 1 drill-press	$313 00

THURSDAY, *January 28th*, 1875.

At a regular meeting of the city council of Parkersburg, held at the council chamber, on the 28th day of January, 1875.

116 Present, his honor the mayor, and Councilmen Poole, Mitchell, Stewart, Remley, Smith, and Gould.

* * * * * * *

At the request of Mr. Mitchell, chairman of the committee on "manufacturers' loan," that part of the minutes of January 12th, 1875, relating to the purchase, by the city, of machen'y, in the O'Brien machine and blacksmith shops, was read to the council.

On motion of Mr. Stewart, the committee on manufacturers' loan was directed to take charge of the O'Brien machine and blacksmith shops, put them in reliable hands, and advertise for rent, requiring bond for delivery of property, tools, &c.

On motion, adjourned.

C. H. SHATTUCK, *Mayor*.

W. H. MCKINNEY, *Clerk*.

THURSDAY, *February* 11, 1875.

At a regular meeting of the city council of Parkersburg, held at the council chamber on the 11th day of February, 1875.

Present, the mayor, Councilmen Mitchell, Stewart, Remly, Smith, Mattingly, and Gould.

* * * * * * *

117 The committee on manufacturers' loan stated that they had had hand-bills printed, posted, and circulated, soliciting proposals for renting the city property known as the O'Brien machine and blacksmith shops until the 25th inst., reserving the privilege of rejecting any or all bids. They presented a bond for two thousand dollars, signed by M. J. & W. S. O'Brien for the safe-keeping and return to the city of the property on the 25th inst. in as good order and condition as it now is, unavoidable accidents excepted, which was, on motion, accepted by the council.

Mr. O'Brien said it would be necessary to have a shaft put up and a belt put on to connect the blower in the blacksmith shops to the driving-power in the machine shop.

On motion of Mr. Stewart, the city council agreed to furnish the belt if the O'Briens would gratuitously put up the shaft and do the work of completing the connection.

On motion, adjourned.

C. H. SHATTUCK, *Mayor.*

W. H. McKinney,
Clerk.

Thursday, *February* 25, 1875.

At a regular meeting of the city council, held at the council chamber on the 25th day of February, 1875.

118 Present, the mayor and all the councilmen. The committee on manufacturers' loan reported that they had advertised for rent the city property known as the O'Brien machine and blacksmith shops, and solicited proposals until the 25th inst., and presented two sealed propositions, to wit, one from F. B. Toothaker, proposing to rent the property at $55 per month from the 1st of March, 1875, and one from M. J. and W. S. O'Brien, proposing to rent the property from March 1st, 1875, at $600 per year.

On motion of Mr. Poole, the council agreed to rent the property to F. B. Toothaker, by the month, at $55 per month, said Toothaker yielding possession at any time after 30 days' notice in writing.

On motion of Mr. Poole, the committee on manufacturers' loan were directed to advertise for one month the property for sale in one Cincinnati, one Wheeling, and one Pittsburgh newspaper.

* * * * * * *

On motion adjourned.

C. H. SHATTUCK, *Mayor.*

W. H. McKinney, *Clerk.*

119 Saturday, *February 27th,* 1875.

At a special meeting of the city council of Parkersburg, held at the council chamber on the 27th day of February, 1875.

Present, the mayor and Councilmen Mitchell, Stewart, Smith, and Gould.

* * * * * * *

The mayor stated that the object of the call of the special meeting was to consult as to the best disposition to be made of the city's machine, boiler, and blacksmith shops.

On motion of Mr. Stewart, the committee on manufacturers' loan were directed to take charge of the property and turn it over to F. B. Toothaker, agreeable to his proposition accepted by the council of February 25th, 1875, taking a bond in the sum of $5,000.00 for the safe delivery in good condition of the buildings and machinery as they are now in, ordinary wear and tear and unavoidable accidents excepted.

On motion of Mr. Smith, the committee on manufacturers' loan was instructed to employ a lawyer to draw up the contract with F. B. Toothaker.

On motion of Mr. Mitchell, the mayor was directed to advertise the property for sale offic'al'y, as set forth in the minutes of the 25' inst.

On motion, adj'd.

C. H. SHATTUCK, *Mayor*.

120 THURSDAY EVENING, *March* 11, 1875.

At a regular meeting of the city council of Parkersburg, held at the council chamber on the 11th day of March, 1875.

Present, the mayor and all the councilmen.

Mr. Mitchell, from the committee on manufacturers' loan, said that he had seen the O'Brien Bros., the occupant of the city machine shops, and they had told him that they were trying to get room elsewhere, and would remove as soon as possible, and pay rent while they occupied the city property.

On motion of Mr. Stewart, the committee were empowered to take legal action to get possession, if necessary, and turn the property over under contract agreeable to former instructions from council.

The following bills, properly certified to, were presented, and on a call of the council, ordered paid out of the general fund:

* * * * * * *

M. Halsted & Co. (Cin. Com.), advert'g city shops for sale........	$34 80
Frew & Campbell (Wheel'g Int.), " " " "	16 00

* * * * * * *

On motion, adjourned.

C. H. SHATTUCK, *Mayor*.

W. H. MCKINNEY, *Clerk*.

121 REGULAR MEETING, *April 8th*, 1875.

At a regular meeting of the city council of Parkersburg, held at the council chamber on the 8th day of April, 1875.

Present, his honor the mayor, and Councilmen Poole, Stewart, Remley, Smith, Mattingly, and Gould.

* * * * * * *

The committee on manufacturers' loan reported that they had closed the lease with F. B. Toothaker for the city machine, boiler, and blacksmith shops, with the tools as it stands, for $55 per month from the first day of April, 1875, either party having the privilege to terminate the lease by giving 30 days' notice.

The lease and schedule of tools and the bond signed by said Toothaker and C. S. Despard were delivered to the mayor.

* * * * * * *

The following bills were read, and, upon a call of council, were ordered paid out of the general fund:

* * * * * * *

Boreman & Burcke, insurance on city shops	$100 00

* * * * * * *

On motion, adjourned.

C. H. SHATTUCK, *Mayor.*

W. H. McKinney, *Clerk.*

122 Regular Meeting, *March 25th*, 1875.

At a regular meeting of the city council of Parkersburg, held at the council chamber on the 25th day of March, 1875.

Present, his honor the mayor, and Councilmen, Mitchell, Stewart, Remley, Smith, and Mattingly.

* * * * * * *

Mr. Mitchell, of the committee on manufacturers' loan, said that he had again called on the O'Brien Bros., and had told them that they were considered trespassers, and the city wanted im'ediate possession, and they told him that they were expecting to move out and leave the premises by the first of April next.

On motion, adjourned.

C. H. SHATTUCK, *Mayor.*

W. H. McKinney, *Clerk.*

Paid Pittsburgh Com., advertising city shops for sale, $30.

Regular Meeting, *May* 15, 1875.

At a regular meeting of the city council of Parkersburg, held at the council chamber on the 15th day of May, 1875.

Present, his honor the mayor and Councilmen Poole, Mitchell, Smith, and Mattingly.

123 The committee on manufacturers' loan reported one month's rent, $55, paid to the sergeant. Also the balance & int., amounting to $118.75, on the note given to the assignee of M. J. O'Brien & Bro., in bankruptcy, given for the purchase of machinery, was paid.

On motion, adjourned.

C. H. SHATTUCK, *Mayor.*

W. H. McKinney, *Clerk.*

Regular Meeting, *June 10th*, 1875.

At a regular meeting of the city council of Parkersburg, held at the council chamber on the 10th day of June, 1875.

Present, his honor the mayor and Councilmen Mitchell, Stewart, Remley, Smith, and Mattingly.

* * * * * * *

A communication from F. B. Toothaker, of date May 27th, 1875, was presented, notifying the mayor that he would give up possession of the city's shops on the 1st of July next, and asking that a proper committee be appointed to receive the same.

On motion of Mr. Smith, the committee on manufacturers' loan were authorized to receive the same from Mr. Toothaker, according to the terms of his lease.

124 On motion, the council adjourned to Tuesday evening, the 15th inst.

C. H. SHATTUCK, *Mayor*.

W. H. McKinney, *Clerk*.

Regular Meeting, *June* 24, 1875.

At a regular meeting of the city council of Parkersburg, held at the council chamber on the 24th day of June, 1875.

Present, the mayor and full board of councilmen.

Mr. Mitchell, of the committee on manufacturers' loan, reported that F. B. Toothaker, the present occupant of the city shops, had again stated to him that he would surrender the property to the city on the 1st of July next, and pay two months' rent then due.

On motion, adjourned.

C. H. SHATTUCK, *Mayor*.

W. H. McKinney, *Clerk*.

Regular Meeting, *July* 29, 1875.

At a regular meeting of the city council of Parkersburg, held at the council chamber on the 29th day of July, 1875.

Present, his honor the mayor and Councilmen Stewart, Remley, Smith, Mattingly, and Gould.

* * * * * * *

125 Committee on manufacturers' loan reported that F. B. Toothaker had surrendered the city's shops on the 1st day of July inst., and paid to the sergeant two months' rent due on that date ($110).

The other committees had nothing to report.

* * * * * * *

On motion, adjourned.

C. H. SHATTUCK, *Mayor*.

Regular Meeting, *Sept. 9th*, 1875.

At a regular meeting of the city council of Parkersburg, held at the council chamber on the 9th day of September, 1875.

Present, his honor the mayor and Councilmen Poole, Stewart, Remley, Smith, and Mattingly.

* * * * * * *

The mayor stated that he had received a letter from W. C. Stiles, jr., with a bill for $106.50 for rent of ground occupied by O'Brien Bros. at Volcano, which was, upon motion, referred to the mayor for investigation and the necessary arrangements, provided the city was liable for the rent.

* * * * * * *

Interest coupons as follows, amounting to the sum of three thousand

eight hundred and seventy dollars, having been paid by check
126 on the general fund, were examined by the finance committee,
found correct, and burned in presence of the council.

* * * * * * *

June interest manufacturers' loan bonds:
Coupon #4 on bonds 21, 22, 23, 24, 32, 33, 34, 35.
" 4 " " 36, 37, 39, & 40 of $15 each, exc. 25, $180.
Paid June 1st, 1875, by check #136.
June int. man'f. loan bonds:
Coupon #4 on bonds 1 to 20, incl. (20), of $15 each, $300.00.
Paid June 8, '75, by check #138.

* * * * * * *

June int. manuf. loan bonds:
Coupon #4 on bonds 25, 26, 27, 28, 29, 30.
" 4 " " 31 & 38, inc., of $15 each. } $120.00.
P'd June 15, '75, by ch'k #149.

* * * * * * *

On motion, adjourned.

C. H. SHATTUCK, *Mayor.*

W. H. McKinney, *Clerk.*

Regular Meeting, *December* 9, 1875.

At a regular meeting of the city council of Parkersburg, held at the council chamber on the 9th day of December, 1875.

* * * * * * *

On motion of Mr. Smith, the committee on manufacturers' loan
127 was directed to put the machin'y in the city shops in a state of
preservation, and procure and put on the necessary locks and fastenings, and secur'ly fasten up the buildings and premises to prevent loss and waste.

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On motion, adjourned.

C. H. SHATTUCK, *Mayor.*

W. H. McKinney, *Clerk.*

Special meeting on call of the mayor, Tuesday, December 28th, 1875, at 3 o'clock p. m.

Present the mayor and Councilmen Poole, Mitchell, Stewart, Remley, and Gould.

* * * * * * *

Committee on manufacturers' loan reported that the mach'nery in the city machine, boiler, and blacksmith shop had been cleaned up and was now in good order, and the premises and buildings well fastened up.

* * * * * * *

The following described interest coupons, taken up and paid, amounting to $3,776, were examined by the finance committee, found correct, and burned in presence of the council:

Coupons #5, Dec. int'st. manuf. loan:
128 Bonds 1 to 20, inclusive of $15 each........................ 300 00
Paid Dec. 9, 1875, by check No. 296.

* * * * * * *

Coupons #5, Dec. int'st on manuf. loan:
Bonds 25, 26, 28, 29, 30, 31, 38, 39, of $15 each.................... 120 00
P'd Dec. 10th, 1875, by check #297.

* * * * * * *

Coupons #5, Dec. int'st manufact'ing loan:
Bonds #21, 22, 23, 24,32, 33, 34, 35, 36, 37, 40, of $15 eac...... 165 00
P'd December 24, 1875, by check #360.

The following bills and abatements were seperat'ly considered, and, on motion, ordered paid out of the general fund:

* * * * * * *

E. Spencer, fee fixing up city shops.................................. $6 00

* * * * * * *

On motion, adjourned.

C. H. SHATTUCK, *Mayor.*

W. H. McKinney, *Clerk.*

Special Meeting, *January* 12*th*, 1876.

At a special meeting of the city council of Parkersburg, held at the council chamber on the 12th of January, 1876.

Present, his honor the mayor and Councilmen Poole, Mitchell, Stewart, Remley, Smith, and Gould.

129 The following abatements and bills were seperat'ly considered, and, on motion, ordered paid out of the general fund:

* * * * * * *

W. J. Hill, sheriff, State and county tax for 1875 on city shops.... 163 80

* * * * * * *

On motion, adjourned.

C. H. SHATTUCK, *Mayor.*

W. H. McKinney, *Clerk.*

Stated Meeting, *January* 25*th*, 1876.

Present, his honor the mayor and all the councilmen.

* * * * * * *

Committee on manufacturers' loan handed in a letter from J. H. Hann, which was read, and it was moved that the communication be referred to the committee on manufacturers' loan, and that such committee see Mr. Hann and ascertain what he can pay as rent for one year, subject, however, to the sale of the property, and in that event possession to be given on thirty days' notice. Adopted.

Adjourned.

J. E. REMLY, *Mayor.*

Thos. P. Butcher, *Clerk.*

130 STATED MEETING, *February 8th*, 1876.

Present, his honor the mayor and all the councilmen.

* * * * * * *

The following bills were considered seperat'ly and ordered paid:

I. W. Peadro, transfer fees, O'Brien lots	$1 50

* * * * * * *

Adjourned.

J. E. REMLY, *Mayor*.

THOS. P. BUTCHER, *Clerk*.

STATED MEETING, *February 28th*, 1876.

Present, his honor the mayor and all the councilmen.

* * * * * * *

The finance committee reported that the coupons, amounting to twelve (12) hundred dollars, found in the safe were coupons which should have been paid by Messrs. M. J. O'Brien & Bro. The council of 1874 had held them, hoping to collect them off the estate of M. J. O'Brien & Bro., bankrupts.

* * * * * * *

Mr. J. H. Hann, in behalf of the State of West Virginia, asked a sum per annum to be named by the city as rent for the O'Brien buildings for a period of ten years, the State reserving the right to cancel the lease at end of any year by giving sixty days' notice. After discussing the matter, Mr. Jackson moved to refer it to the committee on manufacturers' loan. Unanimously adopted. 131

Adjourned.

J. E. REMLY, *Mayor*.

THOS. P. BUTCHER, *Clerk*.

STATED MEETING, *March 28th*, 1876.

Present, his honor the mayor and Councilmen Graff, Jackson, Smith, Toothaker and Witman.

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Mr. Smith reported the metal roof on the O'Brien buildings in need of paint. Mr. Vrooman moved that the committee on manufacturers' loan be authorized to have the roof painted. Carried.

* * * * * * *

A communication from the Chillicothe Foundry and Machine Works, asking price and description of steam hammer, was read. Mr. Witman moved that the clerk write, offering the hammer for $650.00. Carried.

A motion to adjourn was carried. Yeas, Graff, Jackson, Toothaker, and Witman. Nays, Smith and Vrooman.

J. E. REMLY, *Mayor*.

THOS. P. BUTCHER, *Clerk*.

132 STATED MEETING, *May 23d*, 1876.

Present, his honor the mayor and Councilmen Bartlett, Jackson, Smith, Toothaker, Vrooman, and Witman.

* * * * * * *

Mr. Smith moved that the matter of personal liability of members of the city council for voting to pay coupons of the manufacturers' loan be referred to financial committee to ascertain the opinion of the city attorney. Carried.

On motion, adjourned.

J. E. REMLY, *Mayor*.

THOS. P. BUTCHER, *Clerk*.

Special meeting on call of the mayor, 2 p. m., Jan'y 19th, 1876.

At a special meeting of the city council of Parkersburg, held at the council chamber on the 19th day of January, 1876.

Present, his honor the mayor and Councilmen Witman, Vrooman, Graff, Jackson, Toothaker, and Smith.

* * * * * * *

The policies of insurance for six thousand dollars on the O'Brien buildings were accepted amount of premium, one hundred and fifty dollars. Mr. Vrooman moved that the chairman of finance committee have charge of the insurance expiring Feb'y 5, 1876, on O'Brien buildings. 133

On motion, adjourned.

J. E. REMLY, *Mayor*.

THOS. P. BUTCHER, *Clerk*.

STATED MEETING, *June* 13, 1876.

At a regular meeting of the city council of Parkersburg, held at the council chamber on the 13th day of June, 1876.

Present, his honor the mayor and Councilmen Graff, Jackson, Smith, Toothaker, Vrooman, and Witman.

* * * * * * *

The city attorney's opinion on O'Brien's or "manufacturers' loan," was read. Mr. Toothaker moved that it be received and filed. Carried. Mr. Vrooman moved that the holders of the manufacturers' loan bonds be notified that the city declines to pay the debt under the decision of the city attorney. Carried, Mr. Smith voting "No."

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On motion, the council adjourned.

J. E. REMLY, *Mayor*.

THOS. P. BUTCHER, *Clerk*.

134 STATED MEETING, *October 24th*, 1876.

Present, his honor the mayor and Councilmen Graff, Smith, Toothaker, Vrooman, & Witman.

* * * * * * *

Mr. Smith stated that Mr. M. J. O'Brien proposed to rent part of the machin'y in the city shops, viz, a lathe and planer, at a fair rent. Mr. Vrooman moved that the committee on manufacturers' loan be instructed to offer said machinery for sale, and ascertain what Mr. O'Brien would give for it.

* * * * * * *

Adjourned.

J. E. REMLY, *Mayor*.

THOS. P. BUTCHER, *Clerk*.

STATED MEETING, *November 26th*, 1876.

Present, his honor the mayor and Councilmen Graff, Jackson, Smith, Toothaker, and Witman.

* * * * * * *

Mr. Smith, from committee on manufacturers' loan, stated that a party from Pennsylvania desired to rent the city shops for a term of years, and buy the boiler and engine, provided the rent after paying the taxes on the buildings and grounds shall not exceed $500.00 per annum. Mr. Toothaker moved that the committee correspond with the party, and
135 offer him the property at a rent not less than four hundred dollars
per annum, free of taxes to the city for one year, with the privilege of five years. Carried.

* * * * * * *

On motion, the council adjourned.

J. E. REMLY, *Mayor*.

THOS. P. BUTCHER, *Clerk*.

STATED MEETING, *December 26th*, 1876.

Present, his honor the mayor and Councilmen Graff, Jackson, Smith, Toothaker, and Vrooman.

* * * * * * *

Two letters from C. W. McGuire, secretary to Mr. F. K. Stagg, relating to renting the city buildings, were read, and, on motion, referred to the committee on manufacturers' loan.

* * * * * * *

On motion, adjourned.

J. E. REMLY, *Mayor*.

THOS. P. BUTCHER, *Clerk*.

WEST VIRGINIA,
Wood County, to wit:

I, George K. Leonard, do hereby certify that the foregoing is a true and correct transcript of all the orders and entries made on the record of the proceedings of council of the city of Parkersburg in relation to
136 the loan of bonds to M. J. O'Brien and Brother, and in relation to
the property mentioned in the deed of trust from M. J. and W. S. O'Brien and their wives to Okey Johnson, trustee, for the benefit of the city of Parkersburg.

Given under my hand and seal of said city this day of May, 1877.

On another day, to wit, at June rules, held in the clerk's office of this court, the following order was made, to wit:

ISABELLA BROWN
vs.
THE CITY OF PARKERSBURG, M. J. O'BRIEN, W. S. O'Brien, P. F. O'Brien, Jane C. O'Brien, and J. S. McCluer.
} In chancery.

All the defendants in this cause, except The City of Parkersburg, having failed to appear, plead, answer, or demur, although process hath been duly executed upon them, on motion of plaintiff, by counsel, it is ordered that said bill be taken pro confesso as to all the defendants except The City of Parkersburg.

137 On another day, to wit, on the 3d day of July, 1877, the following stipulations of counsel were filed in the clerk's office, to wit:

In the circuit court of the United States for the district of West Virginia.

Isabella Brown
vs.
The City of Parkersburg et al. } In chancery.

It is hereby agreed by and between C. C. Cole, esq., counsel for the said city, and W. W. Van Winkle, of counsel for said complainants, that any and all evidence and testimony required by either of said parties may be taken according to the existing practice and proceedings in the circuit courts of the said State of West Virginia. And it is further agreed that when depositions are offered to be read or used in above cause by either of the above-named parties to this suit, or any others who may hereafter come in and be made parties, by petition or otherwise, no exceptions will be taken to the same for informality in taking if they conform to the law and the practice of the said State courts, the object of counsel hereto being to avoid the requirements of U. S. practice.

Parkersburg, W. Va., June 27th, 1877.

W. W. VAN WINKLE,
Of Complainant's Counsel.
C. C. COLE,
Att'y for City of Parkersburg.

138 And on another day, to wit, on the 17th day of September, 1877, the complainant filed in the clerk's office her replication to the defendants The City of Parkersburg, in words and figures following, to wit:

Isabella Brown
vs.
The City of Parkersburg, M. J. O'Brien, W. S. O'Brien, & wives, J. S. McCluer, assignee. } In equity.

The replication of Isabella Brown to the answer of The City of Parkersburg, defendant.

This replicant, saving and reserving unto herself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that she will prove and aver her said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this replicant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true.

All of which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, & humbly prays as in & by her said bill hath already prayed.

ISABELLA BROWN,
By Counsel.

W. W. VAN WINKLE,
Of Counsel.

139 And on another day, to wit, on the 23d day of September, 1877, the petitions of Witson, Colston, and others to be made parties in this suit was presented, in words and figures following, to wit:

In the circuit court of the United States for the district of West Virginia.
In equity.

ISABELLA BROWN
vs.
THE MAYOR AND CITY COUNCIL OF PARKERSBURG and others.

To the honorable the judges of the circuit court of the United States for the district of West Virginia, sitting in equity:

The petition of James C. Wilson, Frederick M. Colston, and William B. Wilson, copartners under the name of Wilson, Colston and Company, Samuel K. George, Thomas H. Gaither, George M. Mayo, and J. C. W. Powell, respectfully represent to your honors:

First. That all of your petitioners are citizens and residents of the State of Maryland.

Second. That all of your petitioners are bona fide holders, for valuable consideration paid by them of certain of the bonds of the City of Parkersburg, of the kind described in the original bill filed in the above-entitled cause, all of the bonds so held by your petitioners having been issued by said City of Parkersburg for the purpose and under the authority
140 set forth in the original bill, and being part of the bonds to the amount of twenty thousand dollars issued by said City of Parkersburg, as set forth in said original bill.

The bonds so held by your petitioners are held by them as follows:

Your petitioners, Wilson, Colston and Company, are the holders of seven thousand five hundred dollars of said bonds at the par value thereof.

Your petitioner, Samuel K. George, holds said bonds of the par value of one thousand dollars; and your petitioners Thomas Gaither, George M. Mayo, and J. C. W. Powell, each hold one of said bonds of the par value of five hundred dollars.

Third. Your petitioners severally aver that each of them purchased the bonds so held by them respectively in good faith, and paid for and received the same without notice of any infirmity or illegality connected with the issue of the same.

Fourth. They each respectively pray to be allowed to the extent of their respective interests to have the benefit of the bill and other proceedings in this case as if they had been originally made parties complainant therein upon the terms of contributing to the costs of said cause,
141 which they hereby severally submit and offer to do.

And they pray to be allowed to adopt as their own, with referance to the bonds several'y held by them, each and every allegation of said original bill, except such thereof as apply solely to the seperate rights of the complainant in said bill with referance to her own proper bonds, and submit to be in all respects bound by the allegations of said bill.

And they offer to accept the answer already filed to said original bill as an answer to your petitioners' claim in this case.

Wherefore your petitioners pray that your honors will be pleased to pass an order admitting them as parties complainant in said cause, with the benefit and obligations of the proceedings therein had and to be had, as fully as if they had been original complainants in said cause, and upon the terms of agreeing to contribute to the costs and expenses of said cause, and upon such other terms as to your honors may seem meet, and they will ever, &c.

WILSON, COLSTON & CO.
S. K. GEORGE,
By WILSON, COLSTON & CO.
THOS. H. GAITHER,
By WILSON, COLSTON & CO.
GEORGE M. MAYO,
By WILSON, COLSTON & CO.
J. C. M. POWELL,
By WILSON, COLSTON & CO.

VAN WINKLE & AMBLER,
Sol's for Petitioners.

142 Subscribed and sworn to before me this 5th day of July, 1877, by F. M. Colston, a member of the firm of Wilson, Colston and Company, who did make oath, in due form of law, that the matters and facts set forth in the foregoing petition are true, to the best of his knowledge, information, and belief.

ROB. LYON ROGERS,
U. S. Commissioner for Maryland.

Upon the filing of which petition the court made the following order, to wit:

ISABELLA BROWN
vs.
THE CITY OF PARKERSBURG, M. J. O'BRIEN, William S. O'Brien, P. F. O'Brien, Jane C. O'Brien, and J. G. McCuer. } In equity.

This day James G. Wilson, Frederick M. Colston, and William B. Wilson, copartners under the firm name of Wilson, Colston and Company, Samuel K. George, Thomas H. Gaither, George M. Mayo, and J. C. W. Powell, presented their petition praying to be made parties complainant in this cause, and the respective counsel agreeing to the same, and dis-
143 pensing with any rule in the premises, upon consideration of said
petition it is ordered that the said James G. Wilson, Frederick M. Colston, and William B. Wilson, copartners under the name of Wilson, Colston & Co., Samuel K. George, Thomas H. Gaither, George M. Mayo, and J. C. M. Powell be made parties complainant in this cause upon the terms and conditions set forth in their said petition, with leave to them

severally to use such proof as have been taken in relation to their respective interests, and with the condition that they accept the answer of The City of Parkersburg, now filed to said original bill, as an answer to their claims in this case, and which answer they severally accept. And therefore said petitioners are admitted to the benefits and obligations of the proceedings had and to be had in said original case as fully as if they had been original complainants.

(Endorsed:)
We agree to the entry of the within order.

C. C. COLE,
Att'y for The City of Parkersburg.
D. H. LEONARD,
Attorney for the O'Briens.
W. W. VAN WINKLE,
Of Counsel for Complainants and Petitioners.

144 And on another day, to wit, on Wednesday, the 9th day of January, 1878, among others the following order was made and entered, to wit:

Isabella Brown
vs.
The City of Parkersb'g, M. J. O'Brien, W. S. O'Brien, and wives, and J. G. McCuer, assignee. } In equity.

This day came the parties, by their counsel, Charles Marshall, W. H. Fisher, and W. W. Van Winkle, esqs., on behalf of the complainants, and C. C. Cole, counsel for The City of Parkersburg, and D. H. Leonard, esq'r., counsel for the other defendants, and it being agreed between the parties in open court, by their counsel, that all exceptions are waived as to the manner of taking the depositions now filed in this cause, and that no exceptions thereto shall be argued or considered save such as were especially noted by the respective offices in the body of the testimony, and the defendant waiving the cross-examination of the witness N. G. Penneman—

Upon motion and by consent of the parties by counsel, it is ordered that this cause be, and the same hereby is, now submitted to the court,
145 to be argued at such time, and either in this district or in the city of Baltimore, Maryland, as counsel may hereafter agree and arrange among themselves.

And on another day, to wit, on the 23d day of September, 1878, the following stipulation of counsel were filed in this cause, to wit:

In the circuit court of the United States for the district of West Virginia.

Isabella Brown
vs.
The City of Parkersb'g, M. J. O'Brien and wife, W. S. O'Brien and wife, Okey Johnson, trustee, et al. } In equity.

Agreement and stipulation between counsel for complainant and defendant, respectively, made and entered into this 23d day of September, 1878.

In addition to all agreements heretofore made it is now hereby expressly

stipulated that the various and several acts of the legislatures of Virginia and West Virginia, incorporating and relating to The City of Parkersburg, as the same are contained in the printed publication edition of the
laws of said city (entitled "City Laws"), shall be considered as part
146 of the record in the above cause, to be used and referred to by both
parties, it being the object to introduce such acts without the necessity of especially pleading the same.

B. M. AMBLER,
Of Counsel for Complainants.
C. C. COLE,
Attorney for City of Parkersb'g.

And on another day, to wit, on the 23d day of September, 1879, the following petition was filed and order made, as follows:

In the circuit court of the United States for the district of West Virginia, sitting in equity.

Isabella Brown
vs.
The City of Parkersb'g et al.

To the honorable the judges of the circuit court of the United States for the district of West Virginia:

The petition of the complainants respectfully shows unto your honors that in order to present their case more distinctly by the pleadings without the introduction of any new facts or allegations of facts, the complainant desire to introduce after the word "holders," on the 14th page of the
bill of complaint, the words following: "And she is further advised
147 that the said City of Parkersburg is, by her conduct, estopped to deny
the validity of the indebtedness in the bill of complaint mentioned according to the tenor and effect of said bonds and coupons." And they also desire to add to the prayer for relief the following: "Or that the said City of Parkersburg may be decreed to pay the said bonds and coupons according to the tenor thereof, and especially that a decree may be passed for the payment of the overdue coupons upon the said bonds."

Your petitioner further shows that the amendment in no respect *or* affects or prejudices the rights of the defendants, and is only intended for greater certainty and accuracy of allegation; and your petitioners crave leave to make the same.

And as in duty bound, &c.

WILLIAM A. FISHER,
B. M. AMBLER,
For Petitioner.

Ordered by the court this 23d day of September, 1879, that the complainants have leave to amend the bill by adding to the same the allegation and prayer in the petition set out, by writing the same upon the bill of complaint as if originally inserted therein.

HUGH L. BOND,
C't Judge.

148 And on the same day the following agreement of counsel was filed in the papers of this cause.

In the circuit court of the United States for the district of West Virginia.
In equity.

ISABELLA BROWN
vs.
THE CITY OF PARKERSBURG ET ALIAS.

Your orators further charge that even if the said city was not chargeable as trustee from the time of the execution of the said deed of trust by the said O'Briens, a copy of which is filed as complainant's Exhibit I. B., No. 5, it is chargeable with all the duties and liabilities of a trustee with regard to all said property from the respective times at which it actually took possession of the same.

It is agreed that the bill in the above-entitled cause be treated as amended by the insertion of the above allegation with the same effect as though the same had made part of the bill at the time it was filed, and that Hon. Okey Johnson be made party defendant.

Sept. 18, 1879.

WILLIAM A. FISHER,
For Compl't.
C. C. COLE,
For City of Parkersburg.

149 And on the same day the following decree was made and entered in this cause, to wit:

ISABELLA BROWN ET AL.
vs. In equity.
THE CITY OF PARKERSBURG ET AL.

Okey Johnson, trustee, having appeared in this cause, and his answer having been in open court waived, and he assenting to any decree which may be passed, and this cause standing ready for hearing, and having been fully argued by counsel for complainants and defendants, and the court being of opinion that the City of Parkersburg is indebted for the bonds and coupons in the bill and evidence mentioned, and that the said city is responsible for the payment thereof, according to the tenor and effect of the same, and it appearing from the proof in the cause that said bonds were held by the complainants, as follows:

By Isabella Brown	$5,000
By Harriet E. Brown	$5,000
By Wilson, Colston & Co	$7,500
By Thomas H. Gaither	$500
By Samuel K. George	$1,000
By J. C. M. Powell	$500
By George M. Mayo	$500

150 And that there is now due to the said complainants the following sums for interest, coupons, and due and unpaid upon the said bonds, that is to say:

To Isabella Brown	$1,050
To Harriet E. Brown	$1,050
To Wilson, Colston & Co	1,575
To Samuel K. George	210
To George M. Mayo	105
To J. C. M. Powell	105
To Thomas H. Gaither	105

together with the interest upon said sums from September 23d, 1879.

It is, this 23d day of September, 1879, adjudged, ordered, and decreed that the complainants are entitled to have the bonds held by them respectively paid by the City of Parkersburg, at the maturity of the same, payable at the times and in the manner stated in the interest coupons attached to the said bonds. And it is further adjudged, ordered, and decreed that the complainant do recover against the said city respectively, for the several sums hereinbefore set out as due for interest in said bonds, when said bill was filed, and interest upon the same as above stated, from Sept. 23, 1879, and the costs of complainants, and leave is hereby given to sue out execution therefor.

HUGH L. BOND,
C't Judge.

151 And on another day, to wit, on the 24th day of September, 1879, the following order was made and entered, to wit:

ISABELLA BROWN ET AL.
vs.
THE CITY OF PARKERSBURG ET AL. } In equity.

The defendant, The City of Parkesburg, having in open court this day prayed an appeal from the decree entered herein on the 23d day of September, 1879, to the Supreme Court of the United States, to operate as a supersedeas to such decree, the same is hereby granted upon the defendant giving bond with good security, to be approved by the court, in the penalty of twenty-five thousand dollars, conditioned according to law.

September 23d, 1879.

HUGH L. BOND,
C't. Judge.

152 And on another day, to wit, on the 30th day of September, 1879, the following order was made and entered:

ISABELLA BROWN ET AL.
vs.
THE CITY OF PARKERSBURG ET AL. } In equity.

The defendant, The City of Parkersburg, this day offered in open court its bond upon appeal, to operate as a supersedeas to the decree passed in this cause on the 23d day of September, 1879, signed by J. V. Rathbone, W. Vrooman, and J. B. Jackson as sureties; which, on motion of the said City of Parkersburg, by its solicitor, is approved and ordered to be filed. And the clerk of this court is directed to issue a writ of supersedeas to said decree, returnable to the first day of the next term of the Supreme Court of the United States, and to make out and transmit to the clerk of the last-mentioned court a complete transcript of the record in this cause within 30 days from the second Monday of October next.

153 The bond referred to in the foregoing order is in the words and figures following, to wit:

Know all men by these presents that we, The City of Parkersburg and John V. Rathbone, Welington Vrooman, J. B. Jackson, its sureties, are held and firmly bound unto Isabella Brown, Harriet E. Brown, Wilson, Colston & Co., Thomas H. Gaither, Samuel K. George, J. C. M. Powell, and George M. Mayo in the just and full sum of twenty-five thousand dollars, to the payment whereof, well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

In witness whereof the said City of Parkersburg has caused its corporate name and seal to be signed and affixed hereto, by its mayor and chief officer, and the said John V. Rathbone, Wellington Vrooman, J. B. Jackson, have signed their names and affixed their seals hereto this 29th day of September, 1879.

The condition of the above obligation is such that, whereas the above-bound City of Parkersburg has prayed an appeal to operate as a supersedeas from a decree of the circuit court of the United States for the district of West Virginia to the Supreme Court of the United States, in a 154 certain cause in equity, in *in* which the said Isabella Brown and others are complainants, and The City of Parkersburg and others are defendants; which said decree was passed on the 23d day of September, 1879, by said circuit court; and whereas the said appeal has been granted as prayed:

Now, if the said City of Parkersburg shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, and shall also pay all just damages for delay, and interest and costs on appeal, then this obligation to be void; otherwise to remain in full force and virtue.

[SEAL OF CITY.] JACOB B. JACKSON,
Mayor of the City of Parkersburg.
JOHN V. RATHBONE. [SEAL.]
W. VROOMAN. [SEAL.]
J. B. JACKSON. [SEAL.]

(Endorsed:)
Bond approved.

J. J. JACKSON,
Dist. Judge.

SEPT. 30TH, 1879.

Filed in my office this 30th day of Sept., 1879. L. B. Dellicker, clerk.

155 I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do hereby certify that the foregoing is a true transcript from the records in my office, in the case of Isabella Brown and others against The City of Parkersburg and others.

In testimony whereof I hereunto set my hand and the seal of said court, at Parkersburg, in said district, this 10th day of October, 1879.

[SEAL.] L. B. DELLICKER,
Clerk C't C. U. S., D. of W. Va.

156 The United States of America to Isabella Brown, Harriet E. Brown, Wilson, Colston & Co., Thomas H. Gaither, Samuel K. George, J. C. M. Powell, and George M. Mayo, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the fourth Monday of October inst., pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of West Virginia, wherein The City of Parkersburg is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John J. Jackson, judge of the dist. court U. S. for dist. of W. Va., and as such associate justice of the circuit court of said dist., this 21st day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

J. J. JACKSON,
U. S. Dist. Judge, W. Va.

157 (Indorsed:) Sup. Court U. S. 1879, Octo. term. No. 1026. The City of Parkersburgh, app't, vs. Isabella Brown & al. Citation & service. Filed 18' November, 1879.

Service of copy admitted for all the appellees above named.

WILLIAM A. FISHER,
CHARLES MARSHAL,
Att'ys for Appellees.

(Indorsement on cover:) No. 124. The City of Parkersburg, appellant, vs. Isabella Brown, et al. West Virginia, C. C. U. S. Filed 25' October, 1879.

953——5

16487

ADDITION TO RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 124.

THE CITY OF PARKERSBURG, APPELLANT,

VS.

ISABELLA BROWN ET AL.

FILED NOVEMBER 8, 1882.

SUPREME COURT OF THE UNITED STATES.

No. 124.

THE CITY OF PARKERSBURG, APPELLANT,

vs.

ISABELLA BROWN ET AL.

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1 *Caption.*

Depositions taken before me, Charles D. Merrick, a notary public within and for the county of Wood, in the State of West Virginia, pursuant to the annexed notice, at the time and place therein specified, to be read in evidence on behalf of the complainant in an action pending in the circuit court of the United States for the district of West Virginia, in which Isabella Brown, a citizen of and resident in the State of Maryland, is plaintiff, and The City of Parkersburg, M. J. O'Brien, William S. O'Brien, P. F. O'Brien, Jane C. O'Brien, with J. G. McCure, citizens of and residents in the State of West Virginia, are defendants.

Adjournment.

Present for the complainant, no one; present for the defendant The City of Parkersburg, C. F. Scott, esq.; no one present for the other defendants.

On motion of the complainant, and with the consent of the counsel of the defendant The City of Parkersburg, the taking of these depositions is adjourned until the 18th day of July, 1877, at the place and between the hours mentioned in the annexed notice.

C. D. MERRICK,
Notary Public.

JULY 18TH, 1877.

2 At the time and place and between the hours mentioned in the adjournment made on the 14th day of July, 1877. Present for the plaintiff, W. W. Van Winkle, esq.; for the defendant The City of Parkersburg, C. C. Cole, esq.; for the other defendants, no one.

No witnesses appearing, on motion of the plaintiff the taking of these depositions is adjourned until July 19th, 1877, at the place and between the hours mentioned in the notice.

C. D. MERRICK, *N. P.*

JULY 19, 1877.

At the time and place mentioned in the adjournment made on the 18th day of July, 1877. Present for the plaintiff, W. W. Van Winkle, esq.; for the defendant The City of Parkersburg, C. C. Cole, esq.; for the other defendants, no one.

No witness appearing, on motion of the plaintiff the taking of these depositions is adjourned until the 21st day of July, 1877, at the place and between the hours mentioned in the annexed notice.

C. D. MERRICK, *N. P.*

JULY 21ST, 1877.

At the time and place mentioned in the adjournment made on the 19th day of July, 1877. Present for the plaintiff, W. W. Van Winkle, esq.; for the defendant The City of Parkersburg, C. C. Cole, esq.; for the other defendants, no one.

No witnessess appearing, on motion of the plaintiff the taking of these depositions is adjourned until the 23d day of July, 1877, at the
3 place and between the hours mentioned in the annexed notice.

C. D. MERRICK, *N. P.*

July 23d, 1877.

At the time and place mentioned in the adjournment made on the 21st day of July, 1877. Present for the plaintiff, W. W. Van Winkle, esq.; for the defendant The City of Parkersburg, C. C. Cole, esq.; for the other defendants, no one.

No witnessess appearing, on motion of the plaintiff the taking of these depositions is adjourned until July 24th, 1877, at the place and between the hours mentioned in the annexed notice.

C. D. MERRICK, *N. P.*

July 24th, 1877.

At the time and place mentioned in the adjournment made on the 23d day of July, 1877. Present for the plaintiff, W. W. Van Winkle, esq.; for the defendant The City of Parkersburg, C. C. Cole, esq.; for the other defendants, no one.

No witnesses appearing, on motion of the plaintiff the taking of these depositions is adjourned until July 26th, 1877, at the place and between the hours mentioned in the annexed notice.

C. D. MERRICK, *N. P.*

July 26th, 1877.

At the time and place mentioned in the adjournment made on the 24th day of July, 1877. Present for the plaintiff, W. W. Van Winkle, esq.; for the defendant The City of Parkersburg, C. C. Cole, esq.; for the other defendants, no one.

4 No witnessess appearing, on motion of the plaintiff the taking of these depositions is adjourned until July the 27th, 1877, at the place and between the hours mentioned in the annexed notice.

C. D. MERRICK, *N. P.*

July 27th, 1877.

At the time and place mentioned in the foregoing adjournment made on the 24th day of July, 1877. Present for the plaintiff, W. W. Van Winkle, esq.; for the defendant The City of Parkersburg, C. C. Cole, esq.; for the other defendants, no one.

No witnesses appearing, on motion of the plaintiff the taking of these depositions is adjourned until August 7th, 1877, at the place and between the hours mentioned in the annexed notice.

C. D. MERRICK, *N. P.*

August 7th, 1877.

At the time and place mentioned in the foregoing adjournment made on the 27th day of July, 1877. Present for the plaintiff, W. W. Van Winkle, esq., and B. M. Ambler, esq.; for the defendant The City of Parkersburg, C. C. Cole, esq.; for the other defendants, no one.

No witnesses appearing, on motion of the plaintiff the taking of these depositions is adjourned until the 8th day of August, 1877, at the place and between the hours mentioned in the annexed notice.

C. D. MERRICK, *N. P.*

5 AUGUST 8TH, 1877.

At the time and place mentioned in the adjournment made on the 7th day of August, 1877; present for plaintiff, B. M. Ambler, esq.; present for defendant, city of Parkersburg, C. C. Cole, esq.; for the other defendants, no one.

M. J. O'BRIEN, a witness of lawful age, being first duly sworn, on behalf of the plaintiff, deposes and says: My name is M. J. O'Brien. I am a machinist, and I reside in Parkersburg, West Va. I am the M. J. O'Brien, of M. J. O'Brien & Bro. named in the bill in this cause. My firm of M. J. O'Brien & Bro. were engaged as machinists in 1873 at Volcano, in Wood County, West Virginia.

Question by plaintiff's counsel:

State whether or not the said firm of which you are a member removed its works from said Volcano; and, if yea, state to what point the works were so removed, and the circumstances connected therewith.

Ans. 1. By repeated solicitation of some of the prominent citizens, some of which were acting officially, of the City of Parkersburg, West Virginia, we removed our works, except a small branch left at Volcano, and business to Parkersburg, West Virginia, and erected buildings. In
6 consideration of the enterprise the City of Parkersburg agreed to loan us twenty thousand dollars of their bonds—as I understood, their manufacturing loan bonds. These buildings were errected for manufacturing purposes in connection with our regular business.

Ques. 2. State whether or not the agreement on the part of the city to loan your firm the bonds aforesaid formed any part of the inducement for you to remove your works as you have stated.

Ans. 2. It was.

Ques. 3. State whether or not the matters relating to and embracing the negotiations pending between you and the city and the subsequent disposal of the bonds rest in your own individual knowledge, and state your relation to your firm.

Ans. 3. The matters relating to the negotiations of the bonds with the city was made by my brother and myself; I disposed of the bonds the city loaned us myself. Our firm consisted of my brother, W. S. O'Brien, and myself, and of which firm I was financier.

Ques. 4. How far were you acquainted with the business property and value thereof and general interest of your said firm up to the time when this loan was consu'mated?

Ans. 4. I was thoroughly acquainted with all the business, and
7 I knew all the property and the value of it. My brother had charge of the details of the work.

Ques. 5. State whether these bonds were ever delivered to M. J. O'Brien & Bro.; and, if yea, what was done with the same.

Ans. 5. They were so delivered, and I disposed of them in Baltimore.

Ques. 6. State the circumstances connected with such disposition of them by you, to whom they were sold, and all the particulars connected therewith.

Ans. 6. I took the bonds to Baltimore, that is $10,000 of them, and offered them to a banking-house of Alexander Brown & Sons for sale. After an examination the firm of Alexander Brown and Sons offered me

eighty cents on the dollar for them, provided they were all right, and requested me to endorse them and leave them with them for a few days for which they would give me a receipt, and if they were all right would send me a draft for eight thousand dollars, or instruct me to draw on them at sight. A few days after arriving at Parkersburg I received a letter from Alexander Brown & Sons, saying they would take the bonds, with instructions from them to make sight draft on them for eight thousand
dollars for same. The $20,000 of bonds were issued to us in
8 two lots of $10,000 each. About three months after the disposal
of said $10,000 worth of bonds to Alexander Brown & Sons, of
which I have just spoken above, I took the other $10,000 of bonds to Baltimore, and called on Alexander Brown & Sons to dispose of the same. They did not want to purchase any more at that time, but said if I could place them to refer the parties to them as to the standing of the bonds. I then called upon Penniman & Bro., hardware merchants of the same city. After making known my business to Mr. N. G. Penniman, he kindly volunteered his assistance in enabling me to make sale of the same, and after some exertion he was unable to place the same for cash. But he finally agreed to take them on payments ranging from five days to ninety. In consideration of his trouble I gave him the benefit of the accrued interest on said bonds.

Ques. 7. State whether or not you endorsed said bonds at the time of the transfer of the same.

Ans. 7. I did, in the name of M. J. O'Brien & Bro.

Ques. 8. State whether or not Mr. N. G. Penniman went with you to Alexander Brown & Sons, or elsewhere, to negotiate or sell either the first
$10,000 lot of bonds or the second $10,000 lot of bonds, or both.

9 Ans. 8. I think he introduced me first to the house of Alexan-
der Brown & Sons, and also went with me to several other places
to assist me in negotiating a sale of the bonds; that is to say, on both occasions.

Ques. 9. State whether or not you went with Mr. Penniman to the house of W. Wilson Coulston & Co. to place these bonds.

Ans. 9. I do not now remember the names of the houses he went with me to. I went to several houses with him, and he interested himself generally with me in the sale of the bonds, and made personal application to banking houses and persons having means concerning the sale of these bonds.

Ques. 10. State whether or not you or Mr. Penniman, to your knowledge and by your authority, referred *to* the house of Wilson Coulston & Co., or any of the other parties to whom you tried to make sale, to the house of Alexander Brown & Sons for information in regard to the bonds.

Ans. 10. The house of Alexander Brown & Sons having given me that privilege, I presume we did wherever we went, although I cannot say positively.

Ques. 11. Did you consider that Mr. Penniman had the authority from
you to act in the sale or transfer of the bonds, or to refer parties to
10 Brown & Sons for information?

Ans. 11. He had authority from me to negotiate the bonds, and
I told him I was requested by Alexander Brown & Sons to refer any per-

son with whom we might negotiate the bonds to them. I intended that he should be as much at liberty to use that reference as myself.

Ques. 12. What was finally done by you with said bonds, and what, of your own personal knowledge, did you last know of said bonds; that is, both lots of said bonds before referred to?

Ans. 12. The first lot was left at the banking-house of Alex. Brown & Sons. I endorsed them and delivered them to them. The second lot I delivered to N. G. Penniman, at his office and hardware store in Baltimore, they also being endorsed. That was the last that I knew of them of my own personal knowledge.

Ques. 13. State whether or not you were paid by Alexander Brown & Sons for the amount transferred to them, and, further, whether you were paid by Penniman for the amount you transferred to him at the prices agreed upon.

Ans. 13. I was.

11 Ques. 14. State what authority, if any, you had for so disposing of the said bonds?

Ans. 14. By authority of my firm.

Ques. 15. State what acquaintance, if any, you had amongst the bankers, brokers, and capitalists of Baltimore at that time.

Ans. 15. My acquaintance was limited; I had very little, if any.

Ques. 16. State whether or not you made any statement to Alexander Brown & Sons, or to said Penniman, or any other parties to whom you applied, as to the character or validity of the bonds; and, if yea, say what those statements were.

Ans. 16. In selling those bonds I gave the parties to understand that the credit of the City of Parkersburg was good, and that the bonds were understood to be legally issued. I also gave them to understand that the transaction was in good faith, and that the bonds were in every respect valid. I had the acts of the legislature of West Virginia showing the authority for the issue of the bonds, and I had copies from the records of said city showing that all the proceedings were regular, and that the bonds
had been legally issued. I laid these before them, and after doing
12 so I assured them, as I believed, that everything was correct and
regular, and that the bonds would be paid.

Ques. 17. State whether or not you believed that such statements and assurances were true.

Ans. 17. I did.

Ques. 18. State whether you authorized Penniman to make any such statement to the parties to whom he applied; and, if yea, state what you authorized him to say.

Ans. 18. I told him that the bonds were good and regularly issued, and I thought, beyond a doubt, would be paid. That is what I authorized him to say.

Ques. 19. (Complainant's counsel here hands the witness Exhibit No. 5, filed with the bill in the cause.) State whether this paper, now handed you, is a copy of the deed of trust executed by you and your brother and wives to secure the City of Parkersburg for the loan of the bonds.

Ans. 19. I believe this to be a copy of it.

Ques. 20. What is the date of the paper?

Ans. 20. The 13th day of May, 1873.

Ques. 21. State whether you are the party who made the affidavit annexed to the schedule of the personal property which is part of that instrument.

Ans. 21. I am.

13 Ques. 22. Were the contents of that affidavit at the time you
made oath to that schedule according to the real truth; and were
the statements therein contained true or otherwise?

Ans. 22. They were true.

Ques. 23. Upon what were the valuations put upon the property based by you?

Ans. 23. Upon what they cost and my general knowledge of the value of such property.

Ques. 24. State whether or not the value of the property contained in that schedule and referred to in the affidavit was fair, reasonable, and correct at the time.

Ans. 24. It was.

Ques. 25. State what you know about the value of the property mentioned in that schedule, and your reasons for knowing the same.

Ans. 25. From an experience of twenty years as an apprentice, jour-
neyman, engineer, fireman, and superintendant of machine shops, and also
from dealing in, buying, and selling said property or property of that
class; and I had an intimate knowledge of all the property owned by
our firm and contained in that schedule. I bought the majority of it my-
self and know the prices paid for it and the value of the same. I be-
lieve that none of that property was purchased by me at extrava-
14 gant prices.

Ques. 26. State whether or not, in your valuation of said property, you made all necessary allowances for wear and tear, if any there was, and if such valuation was fair and just, after making all such allowances, under all the circumstances of the case.

Ans. 26. I made all necessary allowances, and the valuation was fair and just.

Ques. 27. If the answer of the defendant in this cause states that the personal property, machinery, &c., was valued higher than its real value, please state whether such allegation is true or false.

Ans. 27. I believed then, and I believe now, that the property in that schedule was valued at a fair valuation at that time.

And there not being time to conclude the taking of these depositions to-day, on motion of the plaintiff the further taking of these depositions is adjourned until to-morrow, at the time and place mentioned in the notice hereto annexed.

C. D. MERRICK, *N. P.*

August 9, 1877.

At the time and place mentioned in the adjournment made on yesterday.
Present, for the plaintiff, B. M. Ambler, esq.; for The City of
15 Parkersburg, C. C. Cole, esq.; for the other defendants, no one.

Ques. 28. What amount of money, if any, was ever paid to The City of Parkersburgh on account of these bonds?

Ans. 28. Six hundred dollars.

Ques. 29. Can you state how many sales were had of the property conveyed by your firm in trust for the city?

Ans. 29. These sales were made of the property embraced in the deed of trust.

Ques. 30. When was the first sale made by the city?

Ans. 30. December 15th, 1874.

Ques. 31. What property was then sold; was it personal or real?

Ans. 31. It was personal.

Ques. 32. State, if you can, the items of that sale, the purchasers at that sale, the prices received, and the particulars connected therewith.

Ans. 32. The items were machinery and tools. The purchaser at the sale was W. N. Chanceller, mayor of the city of Parkersburg, whom I had reason to believe was purchasing for the city of Parkersburg. I had reason to believe that he was the sole purchaser. The total amount of the proceeds of the sale was about $2,340.00. I was present at the sale.

Ques. 33. State whether or not you observed what passed at that sale,
and whether or not you made any memorandum at the time of
16 the articles sold and the respective prices thereof.

Ans. 33. I did observe what passed at the sale, and I did take a memorandum of the sale and the prices of the property sold.

Ques. 34. Have you such nemorandum; and, if so, will you file it as part of these depositions?

Ans. 34. I have such memorandum; I will, not file it unless required by the commissioner. My original memorandum is in my private diary.

Ques. 35. Will you allow the commissioner to make a copy of the original memorandum, and will you produce your diary before him for that purpose?

Ans. 35. I will not.

Ques. 36. Will you produce that diary referred to if the commissioner shall require it?

Ans. 36. I will.

(A-copy of said list is here filed from said diary with this deposition as Exhibit No. 3.

The plaintiff here requests witness to make examination of said diary with regard to said memorandum.)

Ques. 37. Were you present at the sale made by J. S. McClure, assignee; if yea, state whether you made or took a like memorandum of that sale?

Ans. 37. I was present and took a memorandum.

17 EXHIBIT No. 3.

Property bought by the city of Parkersburg at sale made by Okey Johnson, trustee, on the 15*th day of December*, 1874.

One steam-hammer	$500 00
" set of boiler-rollers	38 00
3 anvils at 7	21 00
1 boiler attached to building	495 00
1 engine	310 00
1 large planing-machine	510 00

1 line of shafting pulleys, &c.	100 00
1 small lathe No. 1	150 00
1 “ “ No. 2	195 00
1 blower	22 00
Total	$2, 341 00

I certify that the foregoing is a true copy of the original memorandum spoken of by M. J. O’Brien in his answer No.   , on line   , direct examination, said original memorandum being made by said O’Brien, at the above-mentioned sale of the property of M. J. O’Brien & Bro. This copy is filed as Exhibit No. 3 with the deposition of M. J. O’Brien.

C. D. MERRICK,
Notary Public.

18 (Indorsed:) Isabella Brown vs. The City of Parkersburg & others. Exhibit No. 3. Deposition of M. J. O’Brien.

19 EXHIBIT NO. 2.

1	2 “ pipe-cutter	$175 00
1	16-foot lathe, 6 shafts & hangers	625 00
1	11 “ “ “ “	250 00
1	wood “ “	31 00
5	lathe-chucks, at $25	125 00
222½	lbs. lathe tools, &c., at 14	32 27
32	# “ “ “ 15	4 80
1	differential pulley	9 00
5	vises, at 13 c’ts	65 00
19	lot lathe-reamers, at 26 c’ts	5 04
22	lathe mandrels, at 11	2 42
4	“ centres “ 2	8 00
31	f’t 8 in. galvanized pipe	67 00
3	forges, complete, at 3.75	11 25
1	crane and fixtures	11 25
62	pair tongs, 22 swedges, & 18 bottom-swedges, 10 fullers, 10 chisels, 14 head’g tools, 6 set hammers, 8 mandrell’, 6 sledges, & 2 hand-ham’ers	105 00
1	cast-iron former	15 00
1	pair sheet-iron rollers	7 00
1	“ “ “ shears	4 10
1	large and 1 small bear’g-bar & 1 drill-press bear’g-bar.	15 00
1	set pipe-taps ¼ to 2 in., 8 pipe taps, 16 reamers	20 00
25	plug-taps, 3.25, 1 pipe vise, 1.25	5 50
8	top wrenches, 1 pair plumb centres	7 25
1	drill press	313 00
1	plain angle-iron	25

20 I do certify that the foregoing is a true copy of the memorandum made by M. J. O’Brien, at the sale of the property of M. J. O’Brien & Bro., made by J. G. McClure, assignee of said O’Brien Bros., bankrupts, on December 24th and 26th, 1874, and spoken of by said M. J. O’Brien in his direct examination in answer   , and this copy is filed with his deposition as Exhibit No 2.

C. D. MERRICK,
Notary Public.

(Indorsed:) Isabella Brown vs. The City of Parkersburg & others.
Exhibit No. 2. Deposition of M. J. O'Brien.

21 —of several of the sales made.

Ques. 38. Does that memorandum embrace a list of the articles of personal property purchased by the city of Parkersburg and other parties, with the prices obtained therefor?

Ans. 38. It embraces a list of the property purchased by the city of Parkersburg, and the prices therefor, and also the property purchased by Samuel Newberger, and the prices therefor.

Ques. 39. Have you that memorandum; and, if so, will you produce it?

Ans. 39. I will if the commissioner so demands.

(A copy of the said memorandum is here filed as part of this deposition, marked Exhibit No. 2.)

Ques. 40. By whom was the property purchased at that time for the city of Parkersburg—I mean the property purchased at the assignee's sale?

Ans. 40. W. N. Chancellor, mayor of the city of Parkersburg.

Ques. 41. After the purchase of lot No. 80 by the city, who had possession of it?

Ans. 41. Myself and brother, W. S. O'Brien.

Ques. 42. How long did you have such possession?

Ans. 42. I do not now remember.

Ques. 43. State whether or not you occupied it until it was rented?

Ans. 43. We did.

Ques. 44. State, if you know, how it was rented?

Ans. 44. Upon bids advertized for by the city.

22 Ques. 45. State whether or not you and your brother made a
bid at that time; if yea, what was the character of that bid, for what time and for what price?

Ans. 45. We made a bid for the rental of the property by the year, at, I think, $550.

Ques. 46. To whom was it rented?

Ans. 46. I think to F. B. Toothaker.

Ques. 47. How long did he occupy it, and for what purpose was it used by him?

Ans. 47. I understood he paid rent for three months, but did not occupy it at all.

Ques. 48. State whether or not you delivered possession of the property after it had been rented; and if so, to whom.

Ans. 48. We did; to J. W. Mitchell, member of the council, and one of the committee on manufacturers' loan. And I think the mayor of the city was present.

Ques. 49. State whether or not the buildings were open and exposed at the time of such delivery, and all the particulars connected therewith.

Ans. 49. After thoroughly cleaning up all the mach'ery, and cleaning up the building, I locked the door and told the gentlemen who were acting on the part of the city that when they would sign a receipt show-
23 ing that the property was turned over in good order then I would
hand them the keys, which receipt they signed and turned over to me, and I handed them the keys.

Ques. 50. Was that your last connection with that property?

Ans. 50. It was, except buying some machinery from them since.

Ques. 51. Have you that receipt in your possession? And if so, will you produce it before the commissioner and file it as part of your deposition?

Ans. 51. I think I have and will produce it for a copy therefrom to be taken by demand of the commissioner. When the city left us in possession of the property it required of us a bond, I think of $2,000, for the safe keeping of the same, and that receipt I think is endorsed on the back of that bond.

Ques. 52. Will you give the original receipt into the hands of this commissioner to be used at the hearing of this cause?

Ans. 52. I will not give up the original to be filed permanently unless the commissioner will give me a certified copy of it to protect me in any question with the city.

(Said original bond and receipt thereon endorsed is here filed as part of this deposition, marked Exhibit No. 4. Teste, C. D. Merrick, N. P.)

24 Ques. 53. What buildings did you at that time deliver up?

Ans. 53. All the buildings on lot No. 80 in the city of Parkersburg.

Ques. 54. How many that were erected for the purpose of your business?

Ans. 54. Two.

Ques. 55. Name and describe them?

Ans. 55. Machine shop and blacksmith shop. The machine shop was a two story and a half brick building, I think 35 feet by 85 feet, with iron roof. The blacksmith shop was a one-story brick building, with iron roof about 30 by 50 feet.

Ques. 56. State whether at the time of the delivery of the property to the city of Parkersburg authorities they inspected the said premises before said receipt was signed; and if they said anything concerning the condition of the property state what it was.

Ans. 56. They did inspect the property and expressed themselves well satisfied with the condition of the property, and complimented us upon the care that had been taken of it.

Ques. 57. Was the property then in good condition?

Ans. 57. It was.

Ques. 58. What property was in the——

25 Know all men by these presents that we, M. J. O'Brien and W. S. O'Brien and , are held and firmly bound unto The City of Parkersburg in the just and full sum of two thousand (2,000) dollars, to the payment whereof we bind ourselves, our and each of our heirs, executors, and administrators and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated this eleventh day of February, A. D. 1875.

The condition of the above obligation is such that whereas The City of Parkersburg is the owner of and now in the possession of certain real and personal property situate in the said city, on Kanawha street, near the bridge across said river, being the property known as M. J. O'Brien, Bros. machine & blacksmith shops, with all the machinery, fixtures, and appurtenances thereunto belonging, and all the loose personal property in and about said shops belonging to the said city, as specified in two separate schedules annexed hereto and referred to as part hereof, marked respectively A & B:

And whereas the said city has made the said M. J. O'Brien and W. S. O'Brien keepers of said property, who have agreed to keep the same safely for the said city, for the privilege of using the same in the
26 ordinary manner in the mean time:

Now, if the said M. J. O'Brien and W. S. O'Brien shall safely keep all of said real and personal property for the said city until the twenty-fifth day of February, A. D. 1875, or until such day thereafter as they may be suffered by said city to remain the keeper thereof, in as good order and condition as the same now is, ordinary wear and tear and unavoidable accidents only excepted, then this obligation to be null and void; otherwise to remain in full force and virtue.

M. J. O'BRIEN. [SEAL.]
W. S. O'BRIEN. [SEAL.]

STATE OF WEST VIRGINIA,
Wood Co., ss:

Personally appeared before me M. J. O'Brien and W. S. O'Brien, and acknowledged the signing and ensealing of the above obligation for the use and purposes therein mentioned, this day of February, A. D. 1875.

Received, April 2d, 1875, of Messrs. M. J. & W. S. O'Brien the machine shop, blacksmith shop, & all machinery, tools, &c., mentioned and included in the schedule referred to in within bond, the same being in good order and condition.

JOHN W. MITCHELL,
Chairman of Committee on Manufacturers' Loan.

(On margin in red ink:) Isabella Brown vs. The City of Parkersburg et al. Exhibit No. 4. Deposition of M. J. O'Brien. Teste, C. D. Merrick, N. P.

27 —blacksmith-shop referred to?

Ans. 58. A steam-hammer, boiler maters, rollers, anvils, swage-blocks, and general outfit of blacksmith tools too numerous to mention.

Ques. 59. State whether or not the blacksmith tools were portable and easily handled by a single man.

Ans. 59. They were.

Ques. 60. Is the steam-hammer just referred to the same mentioned in Exhibit No. 5, now handed you, valued at fourteen hundred and seventy-five dollars?

Ans. 60. It is, if that exhibit is a true copy.

Ques. 61. Are the said boiler rollers the same mentioned in the said exhibit?

Ans. 61. They are, if the exhibit is a true copy.

Ques. 62. Are the said anvils, the swedge-blocks, and crane the same mentioned in the said exhibit?

Ans. 62. Some are the same, if the exhibit is a true copy.

Ques. 63. Was the property in that building of such a nature as to be injured by exposure?

Ans. 63. It was.

Ques. 64. In what way and to what extent can the property be damaged, the steam-hammer for instance?

Ans. 64. By rust and by the working parts being handled by careless persons, or by persons not knowing anything about it; to what extent I cannot say.

28 Ques. 65. What is a steam hammer?

Ans. 65. It is an upright hammer propelled by steam.

Ques. 66. How is that hammer propelled? Please state as briefly as you can the construction of the machine.

Ans. 66. It is an upright frame with steam cylinder, piston, and valves, with piston-rod connected on cross-head or hammer with valve motion gotten from lever or arm working on an inclined plane, the motion of which is regulated or adjusted by a lever on the side.

Ques. 67. Does or does not that hammer and its attachments in that building consist of intricate and delicate machinery belonging to a steam-engine and its appliances?

Ans. 67. It does.

It being too late to conclude the taking of these depositions on this day, on motion of the plaintiff the taking of the same is adjourned until to-morrow, at the time and place mentioned in the notice hereto annexed.

C. D. MERRICK,
Notary Public.

29 AUGUST 10, 1877.

At the time and place mentioned in the adjournment of yesterday, no witnesses appearing, on motion of the plaintiff, the further taking of these depositions is adjourned until the 13th day of August, 1877, at the time and place mentioned in the notice hereto annexed.

C. D. MERRICK, *N. P.*

AUGUST 13, 1877.

At the time and place mentioned in the adjournment made on the 10th day of August, 1877; present, for the complainant, B. M. Ambler, esq.; for the City of Parkersburg, C. C. Cole, esq.; for the other defendants, no one.

No witness appearing, on motion of the plaintiff, the taking of these depositions is adjourned until the 14th day of August, 1877, at the time and place mentioned in the notice hereto annexed.

C. D. MERRICK, *N. P.*

AUGUST 14, 1877.

At the time and place mentioned in the adjournment made on yesterday; present, for the plaintiff, B. M. Ambler, esq.; for the City of Parkersburg, C. C. Cole, esq.; for the other defendants, no one.

30 The witness, M. J. O'Brien, not appearing, by consent of the parties, the further taking of his deposition is adjourned until such time as he shall appear; and the examination of J. G. McClure, a witness for the plaintiff, is now proceeded with.

J. G. McCure, a witness of lawful age, being first duly sworn, on behalf of the plaintiff, deposes and says:

My name is J. G. McClure; am of lawful age; I live in the city of Parkersburg, West Virginia; I am a lawyer by profession.

1st ques. Are you the party named in the papers of this cause as the assignee of M. J. O'Brien & Bro., bankrupts, and as such a defendant therein?

Ans. 1. I am.

Ques. 2. State whether or not after you went upon your duties as such assignee you sold any of the property in the buildings that had been occupied by said bankrupts; and, if yea, state what objection, if any, was offered by the City of Parkersburg, or its authorized agents, to the making of such sale.

31 The following is a correct copy of the original memorandum of sales made by J. G. McClure, assignee, and spoken of by him in answer on his direct examination.

Dec. 24th, 1874.

D.: Samuel Newberger, $276\frac{9}{12}$ $1\frac{1}{2}$-inch pipe	$28	50
D.: J. N. Camden & Co., 133 feet of 2-inch pipe	22	00
D.: C. H. Turner, $43\frac{1}{2}$ feet of $1\frac{1}{4}$-inch pipe	4	00
D.: 370 feet of $\frac{1}{2}$-inch to Samuel Newberger	13	50
D.: $259\frac{1}{2}$ f't $\frac{3}{8}$-inch pipe to Sam'l Newberger	6	25
D.: 120 f't $\frac{1}{4}$-inch pipe to C. H. Turner	3	00
Subject to deed of trust: 12-inch pipe-cutter & appurtenances to city of Parkersburg	175	00
Subject to deed of trust, D.: 1 16-foot lathe, counter-shaft, & hangers to city of Parkersburg	625	00
Subject to deed of trust D: 1 lathe, 11-feet shears, & counter-shaft to city	250	00
D.: 1 drill-press to city	313	00
Subject to trust D.: 1 wood-lathe to city	31	00
32 Subject to trust D.: 65 stop-cocks, at $2.75 J. N. C. & Co. each, to the city	178	75
Gas-chamber derrick lamps and derrick sh , 1 mattock, & one pick, whole lot at $2.00, to Samuel Newberger	2	00
D.: 4 working barrels, two shafts, and one bright rod, the lot to Chas. Despard	30	00
D.: 8 elbows and two joints of stove-pipe & 5 axe bar , the entire lot to Samuel Newberger	1	05
Subject to trust D.: 5 lathe chucks, 25 each, to the city	1	25
Subject to trust D.: $222\frac{1}{2}$ lbs. of lathe tools, &c., at $14\frac{1}{2}$ cts. per pound, to city	32	27
Subject to trust D.: 32 lbs. of drills to city, at 15 cts. per lb.	4	80
Subject to trust: 205 lbs. boiler rivets, $4\frac{1}{2}$ cts. per lb., to Hannen Smith & Co	9	23
(Written across the face:) Delivered.		
Subject to trust: 1 deferential pully to city	9	00
(Written across the face:) Delivered.		
Subject to trust: 5 vices, at $13 each, to the city	65	00

	(Written across the face:) Delivered.		
33	1 stove and the pipe attached to Chas. Despard	11	55
	(Written across the face:) Delivered.		
	1,000 lbs. sheet-iron to Sam'l Newberger, @ 5 cts. per lb.	50	00
	(Written across the face:) Delivered.		
	Lot of lathe tools, at 26 cts. each, to city		
	(Written across the face:) Delivered.		
	1 lot of lathe wantes, at 11 cts. each, to city		
	(Written across the face:) Delivered.		
	Lathe-cutters, at $2 each, to the city		
	(Written across the face:) Delivered.		
	160 lbs. sheet-iron, 6⅝ cts., to S. Newberger	7	40
	(Written across the face:) Delivered.		
	105 lbs. roof iron, 1 ct. per lb., to Newberger	1	05
	(Written across the face:) Delivered.		
	1 engine, to Newberger	25	25
	(Written across the face:) Delivered.		
	153 lbs. assorted bolts, to Despard, 3 cts	4	59
	(Written across the face:) Delivered.		
	Spouting tin pipe, Newberger		25
	(Written across the face:) Delivered.		
	Shop bell, Despard	2	00
	(Written across the face:) Delivered.		
	½ bbl. faceing, Despard		85
	(Written across the face:) Delivered.		
	Cupalo, Despard	2	05
	(Written across the face:) Delivered.		
	Machinery castings, 3½ cts. per lb., Despard	58	66
	(Written across the face:) Delivered.		
	973 lbs. grate bars, 2½ cts., Newberger	24	23
	(Written across the face:) Delivered.		
	Aetna grate bars, 1,053 lbs., 1¼ cts. per lb., Newberger	13	13
	(Written across the face:) Delivered.		
	Window we'ghts, 401 lbs., 1⅛ cts. per lb., Newberger	4	58
	(Written across the face:) Delivered.		
34	44 flasks, $51.00, C. D. Despard	51	00
	(Written across the face:) Delivered.		
	3 cast-iron flasks, $12, C. Despard	12	00
	(Written across the face:) Delivered.		
	5 ladles, "iron," C. S. Despard, $1.15 each	5	75
	(Written across the face:) Delivered.		
	397, three hundred & thirty lbs. cast-iron blast clamps, C. S. Despard, @ ¾ cts. per lb	2	48
	(Written across the face:) Delivered.		
	272 lbs. snap weights, C. S. Despard, 1⅝ cts. per lb	4	42
	(Written across the face:) Delivered.		
	7 pair crucible tongs, C. S. Despard, 50 c. each	3	50
	(Written across the face:) Delivered.		
	1 pair family scales, C. S. Despard	75	00
	(Written across the face:) Delivered.		
	Deed of trust: 1 pair of scales, Hannan & Smith	12	25

(Written across the face :) Delivered.		
Deed of trust: 1 engine, 8,112 complete, Sam'l Newberger, $51.00	51	00
(Written across the face :) Delivered.		
Deed of trust: 1 crane, $1, Sam'l Newberger	1	00
Written across the face :) Delivered.		
35 1,140 lbs. 1-in. round iron, more or less, Samuel Newberger, 2⅛ c. per lb	24	23
(Written across the face:) Delivered.		
100 lbs. ¼-⅜ & ½-in. iron, Wm. Wright, 3 cts. per lb., paid	3	00
(Written across the face :) Delivered.		
D.: 4,150 lbs. assorted iron, @ 2⅜ c. per lb., Sam'l Newberger	114	13
D.: 494 lbs. large refined iron, 2⅛ c. per lb., Sam'l Newberger	14	20
D.: 203 lbs. hammered iron, 1 ct. per lb., Sam'l Newberger	2	03
1,005 lbs. steel, @ 8 cts. per lb., Wm. Rathbone	80	40
(Written across the face :) Delivered.		
67 lbs. boiler rivets, at 4 cts. per lb., Harman & Smith	2	65
(Written across the face :) Delivered.		
D.: 182 lbs. forged iron, 5 cts. per lb., C. S. Despard	9	10
1 lot scrap iron, Wm. Wright	12	00
(Written across the face :) Delivered.		
30 ft. 6, 3-ply to grindstone, 11½ c. per foot, S. Newberger	3	45
(Written across the face :) Delivered.		
36 44 ft. 6, 3-ply to fan, 19 ct. per foot, C. H. Turner	8	36
(Written across the face :) Delivered.		
48 ft. 7 belt, 19½ cts. per foot, Sam'l Newberger	9	36
(Written across the face :) Delivered.		
130 ft. 5 in. 2″ leather belt, 7 ct. per foot, C. S. Despard	9	13
(Written across the face :) Delivered.		
85 ft. 6 in. 2½-in. leather belt, @ 10 ct. per foot, C. Despard	8	55
(Written across the face :) Delivered.		
192 ' 3-in. leather belt, @ 18 c. per foot, Sam'l Newberger	34	56
(Written across the face :) Delivered.		
50 feet old leather belt, 5 pieces, $2.75 for lot, to C. S. Despard	2	75
(Written across the face :) Delivered.		
1 set of engine patter's, complete, Samuel Newberger	135	00
(Written across the face :) Delivered.		
One lot of patterns, assorted, 91.50, C. S. Despard	91	50
(Written across the face :) Delivered.		
D.: 1 lot plank, $1, Sam'l Newberger	1	00
D.: 2 lanterns, 21 cts. each, Sam'l Newberger		42
D.: 1 desk, $6 "	6	00
D.: 1 pigeon holes, 90 c., C. H. Turner		90
37 D.: One show-case, $5.25, Samuel Newberger	5	25
D.: 1 tin case, 25 ct., Sam'l Newberger		25
D. of trust: 1 mercury steam-gauge, $100; paid, C. H. Turner.		
D. of trust: 2 pressure gauges, 1–1,000 lb., 1–500 lb., 4.50 each, to C. S. Despard	9	00
(Written across the face :) Delivered.		

	(Written across the face:) Delivered.	
33	1 stove and the pipe attached to Chas. Despard	11 55
	(Written across the face:) Delivered.	
	1,000 lbs. sheet-iron to Sam'l Newberger, @ 5 cts. per lb	50 00
	(Written across the face:) Delivered.	
	Lot of lathe tools, at 26 cts. each, to city	
	(Written across the face:) Delivered.	
	1 lot of lathe wantes, at 11 cts. each, to city	
	(Written across the face:) Delivered.	
	Lathe-cutters, at $2 each, to the city	
	(Written across the face:) Delivered.	
	160 lbs. sheet-iron, $6\frac{5}{8}$ cts., to S. Newberger	7 40
	(Written across the face:) Delivered.	
	105 lbs. roof iron, 1 ct. per lb., to Newberger	1 05
	(Written across the face:) Delivered.	
	1 engine, to Newberger	25 25
	(Written across the face:) Delivered.	
	153 lbs. assorted bolts, to Despard, 3 cts	4 59
	(Written across the face:) Delivered.	
	Spouting tin pipe, Newberger	25
	(Written across the face:) Delivered.	
	Shop bell, Despard	2 00
	(Written across the face:) Delivered.	
	$\frac{1}{2}$ bbl. faceing, Despard	85
	(Written across the face:) Delivered.	
	Cupalo, Despard	2 05
	(Written across the face:) Delivered.	
	Machinery castings, $3\frac{1}{2}$ cts. per lb., Despard	58 66
	(Written across the face:) Delivered.	
	973 lbs. grate bars, $2\frac{1}{2}$ cts., Newberger	24 23
	(Written across the face:) Delivered.	
	Aetna grate bars, 1,053 lbs., $1\frac{1}{4}$ cts. per lb., Newberger	13 13
	(Written across the face:) Delivered.	
	Window we'ghts, 401 lbs., $1\frac{1}{8}$ cts. per lb., Newberger	4 58
	(Written, across the face:) Delivered.	
34	44 flasks, $51.00, C. D. Despard	51 00
	(Written across the face:) Delivered.	
	3 cast-iron flasks, $12, C. Despard	12 00
	(Written across the face:) Delivered.	
	5 ladles, "iron," C. S. Despard, $1.15 each	5 75
	(Written across the face:) Delivered.	
	397, three hundred & thirty lbs. cast-iron blast clamps, C. S. Despard, @ $\frac{3}{4}$ cts. per lb	2 48
	(Written across the face:) Delivered.	
	272 lbs. snap weights, C. S. Despard, $1\frac{5}{8}$ cts. per lb	4 42
	(Written across the face:) Delivered.	
	7 pair crucible tongs, C. S. Despard, 50 c. each	3 50
	(Written across the face:) Delivered.	
	1 pair family scales, C. S. Despard	75 00
	(Written across the face:) Delivered.	
	Deed of trust: 1 pair of scales, Hannan & Smith	12 25

	(Written across the face:) Delivered.	
	Deed of trust: 1 engine, 8,112 complete, Sam'l Newberger, $51.00	51 00
	(Written across the face:) Delivered.	
	Deed of trust: 1 crane, $1, Sam'l Newberger	1 00
	Written across the face:) Delivered.	
35	1,140 lbs. 1-in. round iron, more or less, Samuel Newberger, $2\frac{1}{8}$ c. per lb	24 23
	(Written across the face:) Delivered.	
	100 lbs. $\frac{1}{4}$-$\frac{3}{8}$ & $\frac{1}{2}$-in. iron, Wm. Wright, 3 cts. per lb., paid	3 00
	(Written across the face:) Delivered.	
	D.: 4,150 lbs. assorted iron, @ $2\frac{3}{8}$ c. per lb., Sam'l Newberger	114 13
	D.: 494 lbs. large refined iron, $2\frac{1}{8}$ c. per lb., Sam'l Newberger	14 20
	D.: 203 lbs. hammered iron, 1 ct. per lb., Sam'l Newberger	2 03
	1,005 lbs. steel, @ 8 cts. per lb., Wm. Rathbone	80 40
	(Written across the face:) Delivered.	
	67 lbs. boiler rivets, at 4 cts. per lb., Harman & Smith	2 65
	(Written across the face:) Delivered.	
	D.: 182 lbs. forged iron, 5 cts. per lb., C. S. Despard	9 10
	1 lot scrap iron, Wm. Wright	12 00
	(Written across the face:) Delivered.	
	30 ft. 6, 3-ply to grindstone, $11\frac{1}{2}$ c. per foot, S. Newberger	3 45
	(Written across the face:) Delivered.	
36	44 ft. 6, 3-ply to fan, 19 ct. per foot, C. H. Turner	8 36
	(Written across the face:) Delivered.	
	48 ft. 7 belt, $19\frac{1}{2}$ cts. per foot, Sam'l Newberger	9 36
	(Written across the face:) Delivered.	
	130 ft. 5 in. 2″ leather belt, 7 ct. per foot, C. S. Despard	9 13
	(Written across the face:) Delivered.	
	85 ft. 6 in. $2\frac{1}{2}$-in. leather belt, @ 10 ct. per foot, C. Despard	8 55
	(Written across the face:) Delivered.	
	192 ' 3-in. leather belt, @ 18 c. per foot, Sam'l Newberger	34 56
	(Written across the face:) Delivered.	
	50 feet old leather belt, 5 pieces, $2.75 for lot, to C. S. Despard	2 75
	(Written across the face:) Delivered.	
	1 set of engine patter's, complete, Samuel Newberger	135 00
	(Written across the face:) Delivered.	
	One lot of patterns, assorted, 91.50, C. S. Despard	91 50
	(Written across the face:) Delivered.	
	D.: 1 lot plank, $1, Sam'l Newberger	1 00
	D.: 2 lanterns, 21 cts. each, Sam'l Newberger	42
	D.: 1 desk, $6 "	6 00
	D.: 1 pigeon holes, 90 c., C. H. Turner	90
37	D.: One show-case, $5.25, Samuel Newberger	5 25
	D.: 1 tin case, 25 ct., Sam'l Newberger	25
	D. of trust: 1 mercury steam-gauge, $100; paid, C. H. Turner.	
	D. of trust: 2 pressure gauges, 1–1,000 lb., 1–500 lb., 4.50 each, to C. S. Despard	9 00
	(Written across the face:) Delivered.	

	D.: 171 lbs. brass castings, @ 20 cts. per lb., Sam'l Newberger	34 20
	D.: 1 letter case, 45 c., Sam'l Newberger	45
	D. of trust: 1 emery wheel & counter shaft, complete, 23.25; C. S. Despard	23 25
	(Written across the face:) Delivered.	

Saturday's sales.

	D.: 31 feet of 8-inch galvanized and 67 feet of 5-in. do., to city	20 00
	Trust deed: 3 forges, complete, @ 3.75 each; city.	
	D.: One crane & fixtures; city	$11 25
38	62 pairs of tongs, blacksmith tongs, 22 top swedges, 18 bottom swedges, 10 fullers, 10 punches, 10 chisels, 14 heading tools, 6 set hammers, 8 mandril', 6 sledges, 2 hammers, hand, city	105 00
	(Written across the face:) Delivered.	
	1 cast-iron furnace and 3 swedge blocks, city	15 00
	D.: 67 lbs. square nuts, Newberger	1 34
	Trust d.: 15-inch Ritzen drill, Newberger	3 85
	12 lathe dogs, 6 lathe turners, 90 cts. each, C. S. Despard	16 20
	(Written across the face;) Delivered.	
	Pr. sheet-iron rollers, city	7 00
	(Written across the face:) Delivered.	
	D.: Pair large sheet-iron shears, city	4 10
	D.: 1 sucker rod point press, Newberger	80
	D.: 1 John Bull, Newberger	1 00
	D.: 1 large bor*e*ing bar, 1 small, 1 drill-press bor*e*ing bar, city	15 00
	D.: 1 boiler punch, Newberger	5 00
39	D.: 1 hacksaw, Newberger	1 80
	D.: 2 hand hammers, Hannan & Smith	1 40
	2 large wood screw clamps, Despard	30
	(Written across the face:) Delivered.	
	Trust D.: 4 sets stocks and dies, city	12 00
	D.: 1 pipe-tap from 2 in. to $\frac{1}{4}$; 8 pipe-taps, 16 reamers, city	20 00
	D.: 25 plug-taps, city	5 25
	D.: Breast-drill, Newberger	55
	D.: 1 pipe-vice, city	2 55
	Flue-sets, 3 pieces mandr*ill*, Despard	85
	(Written across the face:) Delivered.	
	D.: 8 top-punches, 25 c'ts apiece, city	2 00
	2 hand-pipe setts, C. H. Turner, 2.75 each	5 50
	(Written across the face:) Delivered.	
	D.: 3 pipe-stocks & dies, Chanceller	3 25
	D.: 4 pairs of pipe-rings, at 2.75 each, Turner	11 00
	D.: 1 shop desk, Newberger	25
40	D.: 3 socket wrenches, 20 c'ts each, Newberger	60
	D.: 1 pair $1\frac{1}{2}$ iron jars, Newberger	3 80
	D.: 729 lbs. scrap iron, $1\frac{5}{8}$ c'ts per lb., to Newberger	11 85
	D.: 2 p'r caseing tongs, 1 p'r 2-inch tongs, 1.50 each, Turner; 1 p'r clamps, 1.50	6 00

4 bright rods $2.25 each, C. S. Despaid	9	00
(Written across the face:) Delivered.		
D.: 1 pair plainer centres, city	5	25
D.: 2 plainer angles, city		25
D.: 1 spirit-level, Newberger		20
D.: 12 feet ¼-inch pipe, 1½ c'ts per foot, Turner		18
D.: 48 1-inch foot pipe, Turner	2	40
15 feet ¾ pipe, 18 foot ½-inch, 92 f't of ⅜, 20 feet of ½, 5⅛ per foot, Newberger	7	43
(Written across the face:) Delivered.		
41 15 lathe dogs & claws, at 55 cents each, Despard	8	25
(Written across the face:) Delivered.		
D.: Wire-rope clips, 6, Newberger		25
D.: Tool points, 2 p'rs, $4.55 each, Newberger	9	10
D.: 23 lbs. sodder, 5 c't. per lb., Newberger	1	15
D.: 144 lbs. flang*is*, 16 inches, 1½ cts. each, Newberger	2	16
D.: 3 oil cans, 5 cts. each, Newberger		15
D.: 18 lbs. 1¼ sq'r nuts, 2 cts. per lb., Newberger		36
D.: 1 office desk, Newberger		30
D.: 2 chairs, 12 cts. each, Hannan & Smith		25
D.: Store-room counter, Newberger		35
D.: 1 pull'y, Newberger		39
42 D.: 1 office stove, Newberger	2	10
D.: 904 lbs. castings, same as other, Newberger		
D.: 1 packing ring clamp, Newberger		20
D.: 12 r. washers, 2 cents each, C. S. Despard		24
D.: Lathe clamps, per pair 40 cts. each, Newberger	1	60
Boiler washers tools, S. Newberger	1	05
1,433 machinery castings to S. Newberger, at 3		
24# flat & cap chisels, at 12½, S. Newberger		
5,768 lbs. pig-iron, Gambrel & Co	76	34
	18	
	94	34
Scrap in machene shops, S. Newberger, at ⅝, 726; S. Newberger, by 19 ft. 7″, 3 ply gum-belt, at 19½	8	16

43 I do certify that the foregoing is a true copy of the original memorandum of sales made by J. G. McClure, assignee, and spoken of by him in answer No. 3 on his direct examination and now filed as part of the deposition of said McClure as Exhibit No. 1.

Given under my hand this 17th day of August, 1877.

C. D. MERRICK,
Notary Public.

(Indorsed:) Isabella Brown vs. The City of Parkersburg & others. Exhibit No. 1. Deposition of J. G. McClure.

44 Ans. 2. I did on the 24 of December, 1874, and on the 6th & 7th days of January, 1875, sell, as assignee of O'Brien Bro's, bankrupts, all of the machinery and fixtures, castings, and materials on

hand belonging to them which were in the shops and foundry of M. J. O'Brien & Bro., except that which had been sold by Okey Johnson, trustee, for The City of Parkersburg. There was no objection on the part of the city, so far as I know, to the sale made by me as assignee. The said sale thus made by me was advertised according to law, and for four weeks prior thereto.

Ques. 3. Have you an account of sales and memorandum thereof taken by you at the time the sales were made; and, if so, will you produce it and make it a part of your deposition?

Ans. 3. I have such a memorandum, made at the time of the sales. It is contained in a book of private accounts of my own, and I will file a copy of the same with my deposition.

(Said copy is here filed as Exhibit No. 1 with this deposition. Teste, C. D. Merrick, n. p.)

Ques. 4. Do the articles sold embrace any of the property which had been conveyed in trust to Okey Johnson, trustee, and mentioned in Exhibit No. 5, filed with the bill?

45 Ans. 4. Upon examination of Exhibit No. 5 I find articles mentioned which I sold at the assignee sale of M. J. O'Brien & Bro. named as those charged to The City of Parkersburg in my memorandum of the sale kept at the time. Whether those sold by me as assignee are the same as mentioned in the deed of trust executed by M. J. O'Brien & Bro. to The City of Parkersburg, I cannot say.

Ques. 5. State whether or not any of the city authorities were present at the first sale; and if so, who?

Ans. 5. W. N. Chanceller, the then mayor of the city of Parkersburg, were present.

Quest. 6. State whether or not the city then purchased any of that property; and if so, through whom, and in what way; and for what price?

Ans. 6. The city, through its mayor, W. N. Chancellor, purchased property on the three days of sale before mentioned aggregating in amount $1,601.13; the items and the prices thereof will be set forth in full in the memorandum of sales hereafter to be filed.

Ques. 7. In what way did the city pay for the property purchasid by it?

Ans. 7. Of my own knowledge I can't state, but was informed by W. N. Chancellor that it should be entered as credit upon the deed of trust executed by O'Brien & Bro., to the city. I received nothing from
46 the city for the goods purchased by it.

Ques. 8. Did, or did not, the city through its authorized agents or officer, state to you, and then claim that the property so sold to it as aforesaid, was the same embraced in the deed of trust to Oakey Johnson?

Ans. 8. There was nothing said as to whether the property sold by me was the identical property mentioned in the deed of trust to Oakey Johnson.

Ques. 9. How came it, then, that the city paid you no money? Please state all the circumstances connected with your sales and settlements to and with the city in this connection.

Ans. 9. When I was proceeding to sell on the 24th day of December, 1874, as I reached the different articles which were claimed to be subject to the deed of trust from O'Briens to the city, they were pointed out to me and a note was made on the memorandum kept of the sale. When I had finished selling I made out a bill against the city for the articles purchased at said sale, all of which were subject to the deed of trust. The bill, as before stated, amounted in the aggregate to $1,601.13. This I presented to the then mayor of the city, W. N. Chancellor, and requested payment of the same. 47 He said that as the articles purchased by the city were all covered by the deed of trust they would direct a credit to be entered upon the deed of trust for the amount of the bill purchased.

Ques. 10. Did W. N. Chanceller purchase any property at that sale on any other account besides what he purchased for the city?

Ans. 10. He did for J. N. Camden & Co. to the amount of $200.75. The articles purchased were 133 feet of 2-inch pipe, $22, and 65 stop-cocks, at $2.75 each, $178.75. The latter articles I find marked on my memorandum, "Subject to trust."

Ques. 11. Of whom was the firm of J. N. Camden & Co. composed?

Ans. 11. I don't know.

Ques. 12. Was W. N. Chanceller, the mayor aforesaid, connected with the said firm; and, if so, in what way?

Ans. 12. I can't state of my own knowledge that he was connected with that firm in any way. I went to him, believing him to be a member of the firm of J. N. Camden & Co., and requested payment for the goods which had been bought by him for that firm, and he paid me by paper drawn in the company's name.

Ques. 13. I notice that the sixty-five stop-cocks, at $2.75 each, are marked on your memorandum or account of sales, "to the city," 48 and a memorandum just opposite to it is marked "J. N. C. & Co." Please explain how that is.

Ans. 13. My recollection is that Chanceller, at the time he purchased them, failed to notify my clerk that they were for J. N. Camden & Co., but notified me afterwards of the fact, and paid me for them, as I stated above.

Ques. 14. Do the names of individuals or parties named in your memorandum indicate to whom the goods were respectively sold where such names appear thereon?

Ans. 14. They do; and the amounts purchased by them are correct, as stated in my memorandum, except in some instances where property or articles which had been bought and charged in said memorandum could not be found when called for; in which cases the difference appears on my book of accounts with the creditors of M. J. O'Brien & Bro.

Ques. 15. I understand, however, that memorandum is correct as to the facts as they existed at the time of the sale, and that the property then sold was actually on the ground and disposed of*f*?

Ans. 15. Yes; the property was all there when I sold it.

Ques. 16. What became of the property sold by you to the city?

49 Ans. 16. The property was delivered to the city by me, and some time after it was delivered I saw it in the machine-shops, where I had sold it.

And further this deponent saith not.

J. G. McCLUER.

And it being too late to finish the taking of these depositions on this day, on motion of the plaintiff, the taking of the same is adjourned until August 15th, 1877, at the time and place mentioned in the notice hereto annexed.

C. D. MERRICK, *N. P.*

AUGUST 15, 1877.

At the time and place mentioned in the adjournment last aforesaid; present, for plaintiff, B. M. Ambler, esq.; for the defendant The City of Parkersburg, C. C. Cole, esq.; for the other defendants, no one.

No witnesses appearing, on motion of the plaintiff, the further taking of these depositions is adjourned until the 16th day of August, 1877, at the time and place mentioned in the notice hereto annexed.

C. D. MERRICK,
Notary Public.

AUGUST 16, 1877.

At the time and place mentioned in the adjournment made on August 15th, 1877; present, for the plaintiff, B. M. Ambler, esq.; for The City of Parkersburg, C. C. Cole, esq.; for the other defendants, no one.

50 The examination of M. J. O'Brien resumed by *by* plaintiff's counsel:

Ques. 68. Was or was not the other property in the same building with the hammer of such character as to be broken or injured by handling or exposure?

Ans. 68. The crane and rollers could be injured by careless handling. The balance I don't think could be injured, but could be carried off.

Ques. 69. What was the character of the property in the other or main building?

Ans. 69. It was strictly perishable.

Ques. 70. State of what it consisted, whether of material or machinery.

Ans. 70. Machinery and tools, and shafting pulleys, hangers, &c.

Ques. 71. In what way and to what extent was the property just referred to perishable?

Ans. 71. By rusting, misplacement of parts, and by parts of machinery being detached by careless persons experimenting with the same. To what extent it was perishable I do not know.

Ques. 72. State whether or not that property was liable to be seriously depreciated in value by the carelessness or design of trespassers having free access to it.

Ans. 72. It was.

Ques. 73. State as briefly as you may the character of the ma-
51 chinery as to its delicacy or roughness of construction.

Ans. 74. The larger part of it is of a delicate construction.

Ques. 75. State whether or not that the machinery in these two buildings could have been so cared for as to protect it; and, if so, in what way.

Ans. 75. It could. By carefully coating all the bright or furbished parts of the mach'ery with white lead and tallow properly put on, and by keeping it under cover from the weather and from interferance by careless handlers.

Ques. 76. At what expense could this coating have been put on, and where could parties be found who would put it on properly?

Ans. 76. The expense would be a mere nominal sum, and any machinist could put it on properly.

Ques. 77. In what way would this protect the property?

Ans. 77. It would prevent it from rusting.

Ques. 78. State whether or not the buildings, when properly fastened, would be adequate covering.

Ans. 78. They would.

Ques. 79. State whether or not you ever saw these buildings after you surrendered them to the city. If yea, what has been the condition of the same as to its doors and fastenings and the premises generally?

Ans. 79. I have been engaged in business in the building adjoining them
since I surrendered them to the city, and with the exception of
52 a few days have been there every day from 8 a. m. to 6 p. m., Sunday
excepted, and have noticed the doors of the buildings and gates of the fence surrounding same, and the greater part of the time they have been laying wide open.

Ques. 80. What was the condition of these buildings during the time that Mr. Toothaker had possession of the same?

Ans. 80. They were good.

Ques. 81. State whether or not the buildings were kept fastened and closed up.

Ans. 81. They were.

Ques. 82. State whether at the time when as you state the doors and gates were open, any of the property, machinery, &c., was in there; and, if so, what portion of the same.

Ans. 82. It was; I could not say what portion as from time to time parts of the mach'ery have been sold.

Ques. 83. State whether or not any considerable portion of the property was there.

Ans. 83. It was.

Ques. 84. State whether or not you ever saw any one in either of the buildings since Mr. Toothaker gave them up; and, if yea, who and what
were they doing there.

53 Ans. 84. I have seen at different times men, women, and boys
in there. What they were doing I do not know.

Ques. 85. Of what class or character were these people; did any of them belong to the city authorities or to any agency of the city?

Ans. 85. The women I would judge from their appearance were pretty hard stock. The men, I believe, some of them, were agents of the city, and some I believe were not. The boys were the general class of boys that run on the streets.

Ques. 86. State whether or not the city authorities or agents were there at the same time with the other parties referred to.

Ans. 86. They were not.

Ques. 87. State whether you ever saw any other trespassers in either of these buildings or on the premises connected therewith since Toothaker left.

Ans. 87. If you class cows and hogs trespassers, I have in the yard and in blacksmith shop.

Ques. 88. Was any of the said machinery in the blacksmith shop at the time?

Ans. 88. It was.

Ques. 89. How often have you seen such animals on the premises or in the blacksmith shop?

Ans. 89. Several times.

54 Ques. 90. Were any of them, or were they not, contin*i*ously in the blacksmith shop?

Ans. 90. A large portion of the time they had free access to the building.

Ques. 91. How did they affect the condition of the building?

Ans. 91. Cows, as a general thing, leave a very unpleasant deposit on the floor, and hogs also, and would root the floor; and such was done in this instance.

Ques. 92. What is the height*h* from the ground of these buildings, respectively?

Ans. 92. The machine-shop floor is about twenty inches above the street; the smith shop about four feet, but the large side door is so graded as to take a horse and cart in there, and the end door has no steps.

Ques. 93. State what is the condition of the buildings themselves now as compared with their condition at the time M. J. O'Brien & Bro. failed.

Ans. 93. At the time of the failure of that firm the condition of the buildings was good, except a few panes of glass broken; the condition now is bad, as a large part of the glass and windows in rear of the machine-shop building, with several in the blacksmith-shop building, are
55 broken. Some of the door hinges and fastenings are also broken.

Ques. 94. How did the condition of the buildings at the time of your surrender to the city compare with their condition at the time your firm suspended?

Ans. 94. They were in about the same condition.

And it being to' late to finish the taking of these depositions on the present day, on motion of the plaintiff, the further taking of these depositions is adjourned until August 17th, 1877, at the time and place mentioned in the notice hereto annexed.

C. D. MERRICK,
Notary Public.

August 17, 1877.

At the time and place mentioned in the adjournment made on August 16, 1877. Present for the plaintiff, B. M. Ambler, esq.; for The City of Parkersburg, C. C. Cole, esq.; for the other defendants, no one.

The examination of M. J. O'Brien resumed by plaintiff's counsel:

Ques. 95. State whether or not you ever made an offer to the city to purchase of the property, at or about the time that you surrendered; I refer to the two buildings above, with the machinery, &c., therein; if so, what price you named, and the terms proposed by them?

56 Ans. 95. I did; about in May, 1875; I was authorized by the late Gen'l J. J. Jackson to offer to the city for him the sum of $10,000 cash for the property. I made the offer for him, in his name, to the mayor of the city, and after I had done so he, on behalf of the city, refused to accept the proposition.

Ques. 96. In what business have you been engaged, and what building have you occupied since that time?

Ans. 96. I have been engaged in the machinist business, and general dealer in brass and iron fittings, and pipe, &c.; I have occupied lot No. 116, as I think; it is the same my firm gave a deed of trust on to Thompson Leach, and which Leach, I understand, bought at a trust sale; it is the same lot mentioned in Exhibit No. 6, with the bill in this cause, if said exhibit is a true copy, up to the last ten months, more or less; my brother was engaged with me in business.

Ques. 97. From whom do you rent that building?

Ans. 97. Thompson Leach.

Ques. 98. State, if you please, what rent you have paid therefor, and are paying.

Ans. 98. We paid about $360 a year for two years, and I am now paying $250.

57 Ques. 99. Please describe the building, and state its location relative to these purchased by the city.

Ans. 99. The building is one story high, 40 feet by 60 feet; the building is on the same street with machine shop and blacksmith shop purchased by the city, separated by a twenty-foot alley running at right angles with the street.

Ques. 100. How does its location compare for business purposes with that of the city's trust building?

Ans. 100. It is about the same.

Ques. 101. How does the rental value of the property now occupied by you compare with that of the city's trust buildings, and the property which was therein at the time the city took possession?

Ans. 101. The property owned by the city would be worth considerable more than the property now occupied by me.

Ques. 102. What, if anything, do you rent from Leach except the naked building?

Ans. 102. Nothing that I am using.

Ques. 103. What else that you pay rent for?

Ans. 103. There is a cupalo attached to the building that I have never had in use, but I consider it of no value to me.

58 Ques. 104. State, if you can, the value of the real estate and the buildings thereon upon which your firm gave to the city a deed of trust?

Ans. 104. The lot and buildings cost our firm between ten and fifteen thousand dollars.

Ques. 105. What was the value of the real and personal property embraced in the deed of trust at the time the buildings were completed?

Ans. 105. In my judgement, in a fair market, between twenty-four and twenty-six thousand dollars.

Ques. 106. What was the original consideration for the lot on which these buildings were placed?

Ans. 106. Twenty-five hundred dollars in cash.

Ques. 107. If the answer in this cause states that the value of the real estate mentioned in said deed of trust to the city was not as great as was represented at the time of the execution of said deed, state whether such allegation is true or false.

Ans. 107. We gave $2,500 for the lot, and we never represented to the city that it was worth more than that.

Ques. 108. From whom did you receive the bonds of the city which you negotiated?

59 Ans. 108. The first ten thousand I received from C. S. Despard, then mayor of the city of Parkersburg; the other ten thousand, I do not remember from whom I received them.

Ques. 109. In stating that the prices of the personal property set out in the schedule in the deed of trust to the city were fair and reasonable, did you or did you not mean that that property was valued according to its true and just worth, or value in the markets, and according to the market prices?

Ans. 109. In a good market they were—that is, in a market where such goods were in demand—and they would bring a fair value.

It being too late to complete the taking of these depositions upon this day, upon motion of the plaintiff the further takeing of these depositions is adjourned until the 5th day of September, 1877, at the time and place mentioned in the notice hereto annexed.

C. D. MERRICK,
Notary Public.

SEPTEMBER *5th*, 1877.

60 At the time and place mentioned in the adjournment above, present, B. M. Ambler, esq., for *for* complainant; for defendant The City of Parkersburg, C. C. Cole, esq.; for the other defendants, no one.

JOHN SWEENEY, a witness of lawful age, having been by me first duly sworn as a witness in behalf of the plaintiff, deposes and says:

By B. M. AMBLER, Esq.:

1st ques. State your name, age, residence, and occupation?

Ans. 1. John Sweeney; 23 years old on the 19th day of February coming; I live in Parkersburg, W. Va.; I am a machinist by taade.

Ques. 2. State whether or not you are acquainted with the property formerly occupied by M. J. O'Brien & Bro., for machine shops, and in their business prior to the time of their failure?

Ans. 2. I am; I have worked in them very nearly two years.

Ques. 3. State whether or not you have been acquainted, from time to time, with the condition of the buildings formerly belonging to said firm, and within the last two or three years purchased by the city?

Ans. 3. I have been.

61 Ques. 4. State what the condition of these buildings has been, giving us as far as you may the particulars connected with the care taken of the property.

Ans. 4. They have been thrown wide open most of the time, and free for any one to enter.

Ques. 5. What, if anything, was in those buildings while they have been lying wide open as you have said?

Ans. 5. The machinery that is usually in machine shops. That is, such as an engine, lathes, plainers, and drill press, with their tools and gearing.

Ques. 6. From what time was that the condition of the property, and how long did that condition continue to be so?

Ans. 6. It began shortly after the time that Mr. Toothaker left there and continues so yet.

Ques. 7. State whether you ever seen any trespassers in the buildings during the period just referred to; if yea, please state who they were and what they were doing.

Ans. 7. I have seen boys handling the machi'ery and lathes; I have seen girls go through the building carrying slops to slop their hogs in the back yard.

Ques. 8. Was the machi'ery or other property during the time you have referred to in those buildings, capable of being hurt by exposure, careless handling, or theft?

62 Ans. It was.

Ques. 9. Was any of the property capable of being carried away; if yes, state the kind of property it was.

Ans. 9. Yes, there were the gearings belonging to the lathes, and the gear wheels and other tools, such as wrenches and such like.

Ques. 10. Was any such property saleable when detached from the main mach'ery?

Ans. 10. Yes, they could be sold for something.

Ques. 11. What seemed to be the general character and aspect, and the number of boys who seemed to be in those buildings?

Ans. 11. They were mostly from eight to fifteen years of age, and the boys that generally run the streets. I have seen as high as seven or eight in there at a time.

Ques. 12. How does the condition of the property, at the time O'Brien Bros. left it, compare with the condition of the property, as it has been since then?

Ans. 12. At the time O'Brien Bro. left there, the mach'ery and shops were in good condition, since then, the mach'ery all rusted up. I have seen mach'ery from there that was much rusted.

Ques. 13. What have been your opportunities for knowing the condition of the machine shops and blacksmith shops since that purchase?

63 Ans. 13. I have been employed ever since within about thirty feet of the buildings, and the windows of the place where I work open right on the buildings.

JOHN SWEENY.

No other witness appearing, on motion of the plaintiff, the further taking of these depositions is adjourned until September 12, 1877, at the time and place mentioned in the notice hereto annexed.

C. D. MERRICK,
Notary Public.

SEPTEMBER 12, 1877.

At the office of Van Winkle & Ambler, the time and place mentioned in the adjournment made last aforesaid; present, for the complainants, W. W. Van Winkle, esq.; for The City of Parkersburg, C. C. Cole, esq.; for the other defendants, no one.

W. N. CHANCELLER, a witness of lawful age, being first duly sworn in behalf of the plaintiff, deposes and says:

By plaintiff's counsel:

1st ques. State your name, residence, and occupation.

Ans. 1. W. N. Chanceller; Parkersburg, W. Va.; a merchant by occupation; am one of the persons named in the act of the legislature
64 of West Virginia, passed December 15, 1868, as trustee, and which
act authorized the city of Parkersburg to loan its bonds for manufacturi'g purposes. Subsequent to the vote having been taken on the issue of the bonds—that is, the vote giving the city council authority to issue the bonds under that act—the majority of the trustees named in the said act met on or about the 3d day of August, 1869, when two of said trustees named in the said act, D. R. Neal and J. M. Jackson, declined to act, and the vacancys thus caused were filled by the appointment of James W. Dils and J. N. Camden, who thereafter acted with the trustees; the said vacancies were filled by appointment by the trustees. The next meeting of the trustees was held in February, 1871, and a vacancy occur'ed by the death of Thomas D. Wilson. This vacancy was filled by the appointment, by the trustees, of S. Prager. We had, perhaps, two or three other meetings upon the applications in regard to the loan of manufacturers' bonds, and at one of said meetings, probably early in 1873, J. B. Jackson was appointed to fill the vacancy caused by the death of S. Prager. There were seven trustees in all, and five of them made the recom'endation of the loan to O'Brien & Bro., a copy of which is filed with the answer
65 of the city, dated 13th day of May, 1873. I acted as secretary at
the meeting of the trustees. I took scrap memorandums of the proceedings at these meetings, intending afterwards to make out a record of the minutes, but never have done so. We were of the impression that all of our recom'endations would go on record in the council chamber.

And further this deponent saith not.

W. N. CHANCELLER.

Cross-examination of witness W. N. CHANCELLER.

(All of the testimony of W. N. Chanceller relating to the resignation of trustees of the manufacturers' loan, and the filling of vacancies occasioned thereby, and the proceedings at the meetings of said trustees, is excepted to, for the reason that the same can only properly be proved by minutes or records properly kept of such proceedings at the time they occurred.)

By defendants' counsel:

1st ques. During that period were you mayor of the city of Parkersburg?

66 Ans. 1. My term commenced in January, 1874, and terminated in January, 1875.

Ques. 2. Were you present, and did you purchase some of the property on behalf of the city, at the sale made by McClure, assignee in bankruptcy of the O'Briens, made in 1874?

Ans. 2. Yes.

Ques. 3. State whether or not all the property so purchased by you in behalf of the city was covered by the trust in favor of the city.

Ans. 3. It was claimed by the O'Briens, and understood that it was not all covered by the trust. The property purchased by the city and not covered by the trust was deemed necessary to the running of the shops, and that was the reason it was purchased. It was to make the works complete, and make the property sell better if the city had an opportunity to sell. The city had possession of the shops and buildings from the time she purchased at the trust sale. The O'Briens remained in the shops after the purchase under the Leach deed of trust, by consent of the city.

Ques. 4. State whether during the time from the time of the purchase by the city, under the deed of trust to Leach, to the time of the expiration of your term of office as mayor the shops and other property were
67 cared for and protected in a reasonable manner.

Ans. 4. It was in the possession of the O'Briens and their assignee in bankruptcy, McCluer, until about the time I went out of office.

Ques. 5. State whether at the sale made by McCluer any considerable portion of the machinery and tools covered by the trust in favor of the city were sold to others than the city.

Ans. 5. The city was the purchaser of the largest portion of the mach'ery that was sold, but I only know from the declarations of M. J. O'Brien and his brother at the time of the sale as to what portion of the mach'ery thus purchased was included in the deed of trust.

Ques. 6. Were the trustees of the loan of the city furnished with any evidence of the value of the mach'ery covered by the trust to the city than the declarations and affidavits of the O'Briens?

(Question objected to as incompetent.)

Ans. 6. None that I recollect of.

Ques. 7. State whether the value of such property did not greatly depreciate between the time of the giving of said trust to the city and the latter part of the year 1874.

(Ques. objected to.)

Ans. 7. Yes, sir.

68 Ques. 8. State whether during the same time there was a great depreciation in the value of real estate in Parkersburg.

(Question objected to.)

Ans. 8. In certain localities it had depreciated; in other localities it did not.

Ques. 9. How was it about this particular real estate? And if it did depreciate in value state the cause, if you can.

(Ques. objected to.)

Ans. 9. That depreciated, I think, in value as to the ground as well as to the buildings, because the business for which they were built had become perfectly stagnant.

Ques. 10. How long have you resided in Parkersburg?

Ans. 10. About thirty-nine years.

Ques. 11. How many legal voters were there in the city of Parkersburg on the 17th day of April, 1869?

(Ques. objected to as incompetent and irrelevant.)

Ans. 11. I should think there were at least from ten to twelve hundred; that is an estimate.

Redirect examination:

1st ques. Do you know of your own knowledge what that property was sold by McClure?

Ans. 1. No, sir.

69 Ques. 2. Were you during the time you were mayor a member of the firm of J. N. Camden & Co.?

Ans. 2. I was.

Ques. 3. Was any record ever made or entered of the proceedings taken by the trustees of the loan referred to in your direct examination?

Ans. 3. There was no record in any book, but there was a record on pieces of paper, which have been lost or mislaid. I don't know where they are. Our official recommendation was all the city ever got.

And further this deponent saith not.

W. N. CHANCELLER.

W. S. O'Brien, a witness of lawful age, being first duly sworn on behalf of the complainants, deposes and says:

Ques. 1. (By complainant's counsel.) State your name, age, residence, and occupation.

Ans. 1. W. S. O'Brien. I reside at Volcano, West Va., and I am by occupation a machinist. I am 41 years of age.

Ques. 2. Are you the W. S. O'Brien, formerly a member of the firm of M. J. O'Brien & Bro., mentioned in this suit?

Ans. 2. Yes, sir.

70 Ques. 3. How far were you acquainted with the business, the property, and its value up to the time of the failure of your firm?

Ans. 3. I had a general knowledge of the whole business. I know what we paid for the machinery and the amount we had of it. I was actively engaged in the business, and I was acquainted with the value of our property.

Ques. 4. Complainant's counsel here hands witness Exhibit No. 5 filed with the bill in this cause. State whether or not you and your brother M. J. O'Brien and your respective wives executed to the City of Parkersburg a deed of trust on or about the 13th day of May, 1873, on certain property then owned by your firm.

Ans. 4. We did. The exhibit here shown me I believe to be a copy of said deed of trust.

Ques. 5. State whether or not you were at that time acquainted with the value of the property set forth in the schedule which is part of the deed.

Ans. 5. I was so acquainted.

Ques. 6. How did the value of the property enumerated in that schedule compare with the actual value of the same?

Ans. 6. The value in the schedule was about a fair valuation.

71 Ques. 7. State whether or not the value of the property contained in that schedule was fair, reasonable, and just, after making all allowances for any depreciation, if such there was, under all the circumstances of the case. I refer to the value of the property at the time of the making of the deed of trust.

Ans. 7. To the best of my knowledge it was.

Ques. 8. State what you know about the value of property such as that mentioned in that schedule, what experience, if any, you have had in buying and selling the same, and your general means of knowing the value of this particular property.

Ans. 8. I have been handling iron and steel machinery for twenty-five years. I have been trading in and buying and selling such property for six or seven years. I had a personal knowledge of the prices paid, and know that the property was bought low by us. We had the advantage of frequently being able to pay cash for the articles. I would not take less for the property than the value fixed in the deed of trust.

Ques. 9. What interest had you in that property?

Ans. 9. I was the owner of a half interest in it.

Ques. 10. If the answer of the defendant states that the personal property, mach'ery, &c., was valued in that deed higher than its real value would justify, please state whether such allegation is true or false. 72

Ans. 10. To the best of my knowledge it is false.

Ques. 11. Have you been acquainted with the condition of the buildings bought by the city and the property therein since the same was so bought? If yea, state what the condition has been.

Ans. 11. I have worked near the buildings, and have seen them; they have not been kept in a very good condition.

Ques. 12. What was the condition as to fastenings and as to protection from the weather and intruders?

Ans. 12. As to the fastenings, they were very poor, and the doors were open half the time. I guess the fastenings were all right, if they had been kept fastened properly.

Ques. 13. Was any of the property mentioned in the sc'edule in the buildings when they were so exposed?

Ans. 13. There was.

Ques. 14. What do you know about the negotiation of the bonds mentioned in this suit?

Ans. 14. I know that a negotiation was made, but the particulars were attended to by my brother, M. J. O'Brien, and that is all I know about it.

And further this deponent saith not.

73 And it being to' late to complete the taking of these depositions on the present day, the further taking of the same is adjourned until Friday, November 9th, 1877, at the place and between the hours mentioned in the notice hereto annexed.

C. D. MERRICK, *N. P.*

FRIDAY, *November* 9, 1877.

At the place and between the hours mentioned in the adjournment last aforesaid; present, for the plaintiff, B. M. Ambler, esq.; for the defendant The City of Parkersburg, C. C. Cole, esq., and for the other defendants, no one.

Cross-examination of M. J. O'BRIEN:

(The following numbered questions and the answers thereto in the testimony of M. J. O'Brien are objected to, because the' contain irrelevant and improper testimony: Questions 1, 2, 3, 4, 10, 16, 17, 18, 20 to 27 inclusive, 29, 30, 32, 48, 49, 56, 58, 59, and 60, said objection being made for the defendant by defendant's counsel.)

Cross-examination by defendant's counsel, C. C. COLE, esq.:

1st Ques. Was any of the property covered by the deed of trust to the

city which was sold by McClure purchased by anybody except by
74 Chanceller for the city?

Ans. 1. It was.

Ques. 2. How much and what articles?

Ans. 2. I could not state how much nor the number of articles.

Ques. 3. Was there any considerable portion, comparatively?

Ans. 3. No; not compared to the whole.

Ques. 4. Did not the value of the mach'ery and tools embraced in the trust to the city, and the value of that kind and class of property generally, decline rapidly and very considerably at Parkersburg and vicinity after the time of the giving of the deed of trust by you and your brother to the city, and before the sale thereof by McClure?

(Ques. objected to.)

Ans. 4. Property of that kind depreciated in value all over the country at the time of the panic.

Ques. 5. State of what articles of said mach'ery and tools the city *was* sold since the purchase thereof by it at McClure's sales, and whether the same in your opinion was sold at fair and reasonable prices.

(Ques. objected to.)

A. 5. They have sold all except one planing machine and a fan, a line of shafting and a few small tools, at very low prices. The first
75 sale was made by Okey Johnson, trustee, and the articles were bought by the City of Parkersburg, and said sale amounted to the sum of $2,341, as set forth in Exhibit No. 3, filed with my deposition. J. G. McClure, the assignee, sold at his sale made in December, 1874, and January, 1875, only such property as remained unsold after the trustee's sale by Johnson, and such property as we had purchased after the execution of the trust.

Ques. 6. Since December, 1873, has there been much demand at Parkersburg for property of the kind and character of the mach'ery and tools mentioned in the deed of trust to the city?

(Ques. objected to.)

Ans. 6. From and since the latter part of 1873 there has been very little demand for such property at its true value.

Redirect examination:

1st ques. State whether you know whether any of the property purchased by the city from McClure, assignee, has been sold by the city since the institution of this suit; and, if so, how much.

Ans 1. There has; I cannot state how much.

Ques. 2. Has there or has there not been a considerable portion of the property so sold?

Ans. 2. There has been a considerable portion of the property so sold.

76 Ques. 3. State, if you can, whether the steam-ham*n*er has been sold by the city; and, if so, to whom, when, and at what price.

Ans. 3. It has; to W. A. McCosh for $350.

Ques. 4. State whether it has since been sold; and, if so, by whom and at what price.

Ans. 4. It has been. Mr. McCosh really purchased it for me, and I sold it for $560, delivered here on the cars; McCosh bought it for me about two months ago, and I sold it immediately; I sold to Mynde Bros. & Co., of Olean, New York.

Ques. 5. What was the value of the hammer at the time you sold it?

Ans. 5. I considered the hammer worth $1,000, but being unable to carry it I was compelled to sell it.

Ques. 6. To whom besides the city and J. N. Camden & Co. was any of the trust property sold by J. G. McClure, assignee?

Ans. 6. I think Samuel Newberger, Charles Turner, C. S. Despard.

Recross-examination:

Ques. 1. Was there any considerable portion of said trust property sold to said parties by said McClure, assignee?

Ans. 1. There was not.

77 Ques. 2. Was there any sale for the steam-hammer in Parkersburg, even for the price of $350, at the time you purchased it from the city through McCosh?

Ans. 2. There were two parties in the vicinity of Parkersburg that wanted it at that price; one of the parties had really purchased it at that price, but afterwards declined taking it.

And further this deponent saith not.

M. J. O'BRIEN.

Deposition on behalf of plaintiff, taken at the law office of Marshall & Fisher, in the city of Baltimore, before Murry Hansin, a commissioner for the State of West Virginia, in the State of Maryland, on the 31st day of July, 1877. Present Col. Chas. Marshall, on behalf of the plaintiff, and C. C. Cole, esq., on behalf of The City of Parkersburg, defendant.

FREDERICK M. COLSTON of lawful age, being first duly sworn, deposes and says as follows:

By Col. CHAS. MARSHALL:

1st ques. State your name, age, occupation, and place of residence.

Answer. My name is Frederick M. Colston; I am 42 years of age; I am a banker by occupation; I reside in the city of Baltimore, in the State of Maryland.

78 2d ques. State whether you are a member of any firm, and if so, what firm, and state who compose the firm.

Answer. I am a member of the firm of Wilson, Colston & Co., composed of James G. Wilson, Frederick M. Colston and William D. Wilson. We have been in business in Baltimore, Md., for ten years past, and our present place of business is at No. 134 West Baltimore street.

3d question. Did your firm at any time purchase any bonds issued by the city of Parkersburg, West Virginia, and if so look at the bond now shown you, and filed herewith, and marked "Compl't' Exhibit W. C. & Co., No. 1," and state whether that is one of said bonds, and, if so, what amount of said bonds your firm purchased, from whom, and when, and the circumstances of the purchase.

Answer. In September, 1873, we bought $10,000 Parkersburg bonds at par value, and I recognise this bond as one of the bonds so purchased.

We bought them from N. G. Penniman, at our place of business in Baltimore; we paid him 80 per cent. of the par value for them. Mr. Penniman stated to us that the previous issue of $10,000 of the same
79 class of bonds had been bought from him by Alexander Brown & Sons, and that he thought we could make a profit upon them, which he was desirous to throw in our way.

(Counsel for The City of Parkersburg objects to so much of the above answer as purports to give the declaration of Mr. N. G. Penniman.)

4th question. State who Mr. N. G. Penniman is, and what is his business, and what is his social and mercantile standing in this community.

Answer. Mr. Penniman is a member of the firm of Penniman & Bro., wholesale hardware merchants of Baltimore, and his social and mercantile standing is of the best character.

(The last question and answer objected to by the counsel for The City of Parkersburg.)

5th question (by same). Did any one accompany Mr. Penniman when he sold the bonds to you, and, if so, who was he, and was that person present at the interview between you in reference to the bonds?

Answer. I think that Mr. O'Brian accompanied Mr. Penniman at the 1st interview in reference to the sale of the bonds.

80 6th question (by the same). Has your firm disposed of any of said bonds; if so, what amount of each?

Answer. We sold to Samuel R. George $1,000, to Thomas H. Gaither, George N. Mayer, and J. C. W. Powell, each $500 of said bonds, making $2,500 in all sold. We still own the remaining $7,500. These sales were made before payment of coupons had been stopped.

7th question (by same). At the time you purchased said bonds were all the interest coupons called for, as appears on the face of Exhibit W. C. & Co., No. 1, attached thereto; and, if so, did you receive payment of any; and, if so, how many?

Answer. All the coupons were properly attached as called for by the bond, and we received regular payment of them when due until June, 1876, when the payment of the coupon for that month was refused. The June coupon, 1876, was detached from the bond and forwarded for collection. Those coupons are now in the possession of the owners of the bonds.

8th question (by same). When did you first learn that there was any question with reference to the validity of said bonds?

81 Answer. For the first time when the June coupon', due in 1876, were refused payment.

9th question (by same). Please state of what State the members of your firm, and also Samuel R. George, Thos. H. Gaither, George M. Mayer, and J. C. W. Powell are citizens, and how long they have been citizens of such State.

Answer. All are citizens of Maryland, and have been such, to my knowledge, for at least five years past.

(It is agreed by the counsel that the filing of the bonds referred to in the preeceeding examination shall be dispensed with, provided that the said bonds shall be produced and proved whenever agreed by the court.)

Cross-examination:

1st cross-question (by the counsel for The City of Parkersburg). What one of the O'Briens, if either, was present with Penniman when you negotiated for the purchase of the bonds?

Answer. If present, he was only introduced to me as Mr. O'Brien, and not specified.

And further deponent saith not.

F. M. COLSTON.

82 Mr. GEORGE S. BROWN, of lawful age, being by me first duly sworn, as heretofore certified, deposes and says as follows:

1st question (by Col. CHAS. MARSHALL). State your name, age, occupation, and place of residence.

Answer. My name is George S. Brown; I am 43 years of age; I am senior member of the firm of Alexander Brown & Sons, bankers of the city of Baltimore, and I reside in the city of Baltimore, Maryland.

2' question (by same). Do you know the complainant, Mrs. Isabella Brown, and where does she reside?

3rd question (by same). Did your firm, or you personally, at any time, purchase any bonds issued by the city of Parkersburg, West Virginia, and purporting to be issued by the authority of the act of the general assembly of the State of West Virginia, passed December 16th, 1868? If so, please look at the bond now shown you and herewith filed, marked Complainant's Exhibit I. B., No. 1, and state whether the bonds so purchased were like said exhibit, and whether or not said exhibit is one of the said bonds.
83 If you *you* purchased any of said bonds state when you purchased them, from whom, where, and at what price, and for whom, and all the circumstances of such purchase.

Answer. In June, 1873, I purchased from Mr. O'Brian, accompanied by Mr. N. G. Penniman, $10,000 at par value of the bonds similar to the one shown me, said exhibit being one of the bonds so bought. I paid 80 cents on the dollar for them; $5,000 of them being purchased on account of my mother, Mrs. Isabella Brown, who now owns them, and the other $5,000 for myself as trustee of my wife, Harriet E. Brown, and I now hold them for her. The purchase was made at the banking-house of my firm in Baltimore. Mr. Penniman came to my office in company with a gentleman whom he introduced as Mr. O'Brien. I don't know that he mentioned his first name. Mr. O'Brien explained to me that the city of Parkersburg had issued to him, in order to encerage manufactures, a certain amount of bonds. I think he said the whole issue was to be $20,000. But I don't know that he then stated that he had received the whole amount. He then offered to sell me $10,000 of them at 80
84 per cent. I think he then had them with him. After consideration I agreed to take $10,000 at 80 per cent. My recollection is, however, that before taking them I wrote to Mr. W. W. Van Winkle, at Parkersburg, and received a satisfactory reply from him as to the validity of the bonds, and everything appearing perfectly satisfactory, I purchased the bonds, and Mr. O'Brien promised to give us the option of the others, and later in the summer or in the fall he offered me the others; but having at that time no money to invest, I declined to take them. The bonds that I bought were delivered to me, I think, by Mr. O'Brien, Mr. Penniman being present at the time; that is my recollection. I file with

the commissioner a copy of my letter to Mr. Van Winkle above referred to and his reply thereto, marked respectively Complainants' Exhibits I B, No. 2 & 3.

4th. Question (by the same.) Were all the coupons called for by said bonds attached thereto when you bought them?

Answer. They were.

5. Question (by same). When and under what circumstances
85 did you first become acquainted with any question as to the validity
or legality of said bonds, or of any disposition on the part of the
city of Parkersburg to refuse payment of the same?

Answer. For the first time, on the return of the June coupon for 1876, unpaid.

6th question (by the same). What knowledge of the said bonds had the complainant or your wife other than such as they may have derived from yourself?

Answer. None whatever.

7th question (by the same). State whether you ever communicated what you knew in reference to the bonds to any member of the firm of Wilson, Colston & Co.; if so, to which member and under what circumstances?

Answer. My recollection is that Mr. Colston, of the firm of Wilson, Colston & Co., came to my office and stated that his firm had been applied to to purchase $10,000 bonds of the city of Parkersburg, endorsed by M. J. O'Brien & Bro.; that he had been informed by Mr. O'Brien and Mr.
Penniman that I or my firm had purchased $10,000 of similar
86 bonds, and that he wanted to know what information I could give
him as to the character of the security. I told him that I had
purchased $10,000 of said bonds, and that I considered them as good security, either stating to him the contents of or showing him the letter of Mr. Van Winkle of Parkersburg, already referred to.

Cross-examined:

1st cross-question (by the counsel for The City of Parkersburg). Did you originally purchase the bonds from O'Brien as agent for your mother and trustee for your wife, or did you or your firm purchase them from O'Brien, and then you take them as such trustee or agent?

Answer. I bought them as agent for my mother and as trustee for my wife in the first instance. My firm never had any interest in them; the purchase money was paid out of their accounts and charged to them respectively.

2d cross-question (by same). Did you receive the letter of Mr.
87 Van Winkle, filed with your examination, before you concluded
the purchase of the bonds?

Answer. My impression is that I did, but I can ascertain by reference to my check-book. If upon examination I find that I am in error I will correct it.

Re-examined:

8th question (by same). Where are the coupons of June, 1876, which were returned unpaid?

Answer. They are now in my possession.

And further deponent saith not.

GEORGE S. BROWN.

It is agreed between the counsel that the production and filing of the bonds spoken of by this witness shall be dispensed with, provided that said bonds shall be produced and proved whenever the court shall so require.

The further taking of these depositions is continued by adjournment by consent of counsel until the thirteenth day of August, A. D. 1877, at the time and place named in the annexed notice.

MURREY HANSON,
Commissioner.

88 MONDAY, 13*th day of August, A. D.* 1877.

Met pursuant to adjournment. Present, William A. Fisher, esq., counsel for pl't'f.

FREDERICK M. COLSTON, of lawful age, being reproduced before me by agreement of counsel, and being by me first duly sworn as hereto certified, resuming, deposes and says as follows:

1st question (by WILLIAM A. FISHER, counsel for pl't'f). Please state whether, before the purchase of the bonds made by you, you made any enquiry in regard thereto; if so, of whom, of what character, and with what result?

Answer. We made enquir'es before consum'ating the purchase, first, as to the debt of the city of Parkersburg and the character and standing of its bonds. We ascertained that members of Alexander Brown & Sons' families and Ex-Governor Thomas Swann were large holders of the bonds of that city, and esteemed them among their best securities.

89 2d question (by same). Please state whether you made specific enquiries as to the particular class of bonds now in controversy, and especially in regard to their validity.

Answer. We did; and ascertained that the first $10,000 of this issue had been bought by Mr. George S. Brown; whether for himself or others was not stated at that time, and that he had taken the advice of his counsel in Parkersburg, Mr. Van Winkle, on the bonds, and that he was advised that they were duly and legally issued.

3d question (by the same). Was the conversation last mentioned prior to your purchase of any bonds?

Answer. We were informed of these facts before the purchase, but I am uncertain whether before the purchase I got the facts directly from Mr. George S. Brown, or they came from him to me indirectly, and were afterwards confirmed by a conversation with him. And further deponent saith not.

F. N. COLSTON.

The further taking of these depositions is continued by adjournment by direction of plaintiff's counsel, and by consent of C. C. Cole, counsel for The City of Parkersburg, until the 15th day of September, A. D.
90 1877, at the time and place named in the annexed notice.

MURRY HANSON,
Commissioner.

SATURDAY, *September 15th*, 1877.

Met pursuant to adjournment. Present, Col. Chas. Marshall, counsel for plaintiff.

NICHOLAS S. PENNIMAN, of lawful age, being produced before me, and being by me duly sworn, as hereto certified, deposes and says, as follows:

1st question (by plaintiff's counsel). State your name, age, residence, and occupation.

Answer. My name is Nicholas S. Penniman. I am 53 years of age, and reside in the city of Baltimore. I am engaged in the wholesale hardware business in the city of Baltimore. I am one of the firm of Penniman & Bro.

2d question (by same). Please state whether you were acquainted with the firm of M. J. O'Brien & Bro., of Parkersburg, West Virginia, or any member of that firm.

Answer. I am acquainted with said firm, who are customers of my house, and know personally M. J. O'Brien, Mr. M. J. O'Brien, who
91 was the buyer and business man of said firm, and with whom I had my personal dealings.

3d question (by same). Look at Complainant's Exhibit W. C. & Co. No. 1, and Complainant's Exhibit, J. B. No. 1, and state whether you ever had any transactions with M. J. O'Brien & Bro., or M. J. O'Brien, or any transaction on account of said firm, with reference to bonds of the city of Parkersburg similar to said exhibits; and, if so, state fully and particularly when you had such transaction, with whom, and what they were.

Answer. The bonds now shown me are similar or identical to those negotiated by me in connection with M. J. O'Brien, of M. J. O'Brien & Bro., for their account. Mr. M. J. O'Brien, of said firm, who had been a customer of ours while at Volcano, came to me in Balt'o. in June, 1873, to make new purchase of hardware to aid in the construction of and for stocking the new factory which he was about to erect in the city of Parkersburg to move his business to said place. He brought with him $10,000 city of Parkersburg bonds issued to their firm by the city of Parkersburg, upon the security of the factory and machinery
92 owned and being constructed in the city of Parkersburg. Mr. O'Brien requested my aid to assist him in the negotiation of said bonds. I went with Mr. O'Brien to the banking-house of Alex. Brown & Sons, and introduced Mr. O'Brien to Mr. George S. Brown, of said firm. Mr. O'Brien exhibited the bonds to Mr. Brown, and explained to him the object of the city of Parkersburg in issuing said bonds. Mr. Brown stated his willingness to buy the bonds when he should have had the opportunity of consulting his counsel in Parkersburg as to the validity of their issue. When that question came up, Mr. O'Brien stated in the presence of myself and Mr. Brown that he had consulted his counsel in Parkersburg, and that there was no question as to the legality of the bonds. He further stated to Mr. Brown, that Mr. Brown being a large owner of property in Parkersburg, and being interested in the welfare of that city, that the presence of a large machine-shop and works would be of great general benefit to the city. The bonds were left with me to wait the final decision of Mr. Brown, and being endorsed by M. J. O'Brien & Bro.,

were delivered by me to Mr. Brown, and the money obtained from
93 him and remitted to M. J. O'Brein & Bro. of Parkersburg. Later
in the season, in the month of September, Mr. O'Brien again came to Baltimore to make further purchases of hardware, and to negotiate the further issue of $10,000 of bonds identical with the one shown me marked Exhibit W. C. No. 1, with the statement that these bonds had been retained in the possession of the city until the value of the buildings by its continued errection and the accumulation of machinery within it completed the security which he was giving to the city for the bonds issued to his firm. He represented that the value of the security was considerably greater than the value of the bonds, and based his credit with me in part by the excess of such value. I went with him, Mr. M. J. O'Brien, to Wilson, Colston & Co. and introduced Mr. O'Brien to Mr. Colston. Mr. O'Brien repeated in substance to Mr. Colston the same statement he had made previously to Mr. Brown, and referred Mr. Colston to Mr. Brown for any further information he might want. This we did by permission
of Mr. Brown, as we had called at his office on our way to Mr.
94 Colston's, and offered to him the additional $10,000 bonds. Mr.
Brown said that he had as many as he wanted. We then went to Wilson, Colston & Co. as I have stated. Mr. Colston, after consultation with Mr. Brown, agreed to take the bonds, paying part in cash and part on short credit. The credit payment was duly paid and the amount so rereceived was placed to the account of M. J. O'Brien & Bro. by me. The prices paid by Messrs. Brown & Wilson, Colston & Co. was 80 cents on the par value of the bonds.

4th question (by same). Please state whether at the time of the sales of said bonds, Mr. Brown, or the firm of Wilson, Colston & Co. or Mr. Colston had any knowledge of any of the circumstances attending the issuing of said bonds to M. J. O'Brien & Bro., or any knowledge respecting said bonds other than what you have above mentioned, and state whether you yourself had any other information in reference to said bonds than that which you communicated to Messrs. Brown and Colston?

Answer. I have no other information, and never had the slight-
95 est doubt of the validity of the bonds, and so far as I know none
of the other parties had.

5th question (by same). Do you know any other matter or thing touching the centroversy in this suit? If so, state it fully.

Answer. I know nothing further.

And further deponent saith not.

N. J. PENNIMAN.

No other witnesses being produced before me, I here close the taking of these depositions and send the same to the clerk of the circuit court of the United States, district of West Virginia, certified under my hand and seal.

MURRY HANSON,
Commissioner.

Complainant's Exhibit W. C. & Co., No. 1.

$500.] $500. [$500.

No. 21.] [No. 21.

This is to certify that the City of Parkersburg is indebted to M. J. O'Brien
& Bro., or order, in the sum of five hundred dollars, payable on
96 the 1st day of June, in the *in the* year one thousand eight hundred and ninety-three, in the city of Parkersburg, on the surrender of this certificate, with interest thereon in the interval, at the rate of six per centum per annum, payable semi-annually in the city of New York, on the first day of June and December in each and every year, on the presentation of the respective half-yearly coupons thereto attached.

This certificate is issued by authority of the act of the general assembly of the State of West Virginia passed December 16th, 1868.

In testimony whereof the mayor and council of the said city of Parkersburg have caused this certificate to be sealed with their corporate seal, attested by the signatures of their mayor and clerk, at the city of Parkersburg aforesaid, in the State of West Virginia, this first day of June, in the year 1873.

[SEAL OF CITY OF PARKERSBURG.] C. S. DESPARD, *Mayor.*
W. H. McKinney, *Clerk.*

(On the right-hand margin:) Manufacturers' loan.
(On the left-hand margin:) Manufacturers' loan.

To which are attached coupons, numbered from No. 7 to No. 40, both inclusive, in words and figures following:

97 *Coupon No.* 7.—*Bond No.* 21.

The City of Parkersburg, West Virginia, will pay the bearer in the city of New York, on the first day of December, 1876, fifteen dollars, for six months' interest on certificate of manufacturers' loan.

W. H. McKINNEY, *Clerk.*

Complainant's Exhibit No. 1 I. B. is in words and figures precisely the same, except as to the No. of the bond, which in this bond is No. 1.

Both exhibits are endorsed across the back.

M. J. O'BRIEN & BRO.

Complainant's Exhibit I. B. No. 2 is in the words and figures following, to wit:

(Copy.)

BALTIMORE, *June 20th*, 1873.

W. W. VAN WINKLE, Esq., *Parkersburg:*

DEAR SIR: We have been offered, at a price satisfactory to us,
98 some bonds of City of Parkersburg, issued on 1st inst., to M. J.
O'Brien & Bro. It seems to be called "manufacturers' loan." We

agreed to purchase some of them, provided our enquiries should be satisfactory, and our object in writing to you is to enquire whether you know anything about these bonds. The name of the loan seems to us rather strange, but if the legal authority is all right, that, of course, would be of no consequence. Can you give us any information as to them? We presume they are like most city bonds, the lien on all the taxable property of the city. What is your present tax basis, and what debt is at present in existence? Please advise us at your earliest convenience.

Yours, truly,

ALEX. BROWN & SONS.

They are all under an act of 1868.

A. B. & SONS.

Does your city or State tax these bonds?

A. B. & SONS.

Complainant's Exhibit I. B. No. 3 is in words and figures following, to wit:

PARKERSBURG, *June* 24, 1873.

Messrs. ALEX. BROWN & SONS,
Baltimore, Md.:

99 GENTLEMEN: Yours of the 20 inst. came duly to hand and contents noted.

By an act of the legislature, passed December 15, 1868, the city was empowered to issue bonds to an extent of $200,000 to aid manufacture's doing business in this (Wood) county, the bonds to run twenty years, bear 6 % interest, and a vote was first to be taken before authority was given the council to issue the loan, and then only upon the recommendation of the commissioners named in the act. The party desiring the loan must have invested 35 % of the proposed capital, clear of all liabilities, this fact to be shown to the commissioners by affidavits or other satisfactory evidence, and then the loan could be made to the extent of 65 % of the proposed capital; the borrower to pay the interest to the city trustees semi-annually, and five per centum of the principal to be paid to the credit of the sinking fund annually until the loan is paid in full. The loan shall be secured by deed of trust, mortgage, or other satisfactory security sanctioned by the commissioners. My examination disclose' that
a special election was held in 1869 and a large majority of the voters
100 concu'ed in authorizing the loan; that an order was made by the
council in 1870, directing a loan of $20,000 to Messrs. M. J. O'Brien & Bro. This order was not taken advantage *off* until the spring of the present year, when the council modified it by relieving them from building a marine railway and awarding them the loan according to the order of 1870. In accordance with the act the commissioners took charge of the matter, and in their report certify that satisfactory evidence has been adduced to show that 35 % of the total capital has been invested by the applicant, free of all liabilities, and the commissioners unanimously recommend the loan; whereupon the council directed the bonds to be issued to the extent of $10,000, when the applicants executed a deed of trust; this they have done, embracing therein the machi'ery and other personal

property to the value of $15,000. When the walls of the building, now in process of errection are up sufficient to receive the roof, the other $10,000 will be delivered; the security will then be enhanced to $10,000 more in addition; to be safe in case of fire, O'Briens have been required to assign policies of insurance for $14,500. I am satisfied that the act of
101 the legislature has been complied with literally, and under its authority the bonds are legal.

By a clause in our constitution, which went into effect January 1, 1873, it was provided that city, except in cases where it had already authorized bonds to be issued, should hereafter be allowed to become indebted for any purpose in an aggregate exceeding 5 % of its taxable property. Previous to this enactment there was no limit, and from a careful examination I am of opinion that the city has a right to issue the bonds and to increase the present indebtedness.

The present indebtedness, after crediting it with the amount in the sinking fund, is about $155,000; the tax basis of the city, taken from the assessment of the present year, is $3,652,159.00.

I do not think that these bonds in your hands as non-residents can be taxed either for city or State purposes.

Yours, respectfully,

W. W. VAN WINKLE.

102 The deposition of Charles B. Smith and others, taken before me, C. D. Merrick, a notary public in and for the county of Wood and State of West Virginia, pursuant to the notice hereto annexed, at my office in the city of Parkersburg, in the county and State aforesaid, on the 10th day of November, 1877, between the hours of 9 a. m. & 6 p. m., of that day, to be read in evidence on behalf of the defendant, The City of Parkersburg, in a cause in chancery, in a cause now pending in the circuit court of the United States for the district of West Virginia, to whom Isabella Brown is complainant and The City of Parkersburg and others are defendants.

Present, for defendant City of Parkersburg, C. C. Cole, esq.; for complainant, B. M. Ambler, esq.

C. B. SMITH, a witness of lawful age, being first duly sworn on behalf of the defendant, deposes and says:

Ques. 1st. By defendant's counsel. State your residence and occupation.

Ans. 1st. Parkersburg, W. Va.; am a merchant by occupation.

Ques. 2nd. Are you a member of the city council of Parkers-
103 burg; and, if so, how long have you been so?

Ans. 2nd. I am now and have been for three years next January.

Ques. 3d. State what care the city authorities have taken of the property, real & personal, constituting the O'Brien machine-shops, during the time you have been a member of the city council.

Ans. 3d. I think the council used due diligence in taking care of the property, the best care that could be taken of it, unless they put some one right in the building in charge of it. As a member of the committee on manufacturers' loans, I think for two years, I hired a carpenter to put on locks and nail the windows and doors and the fence and gates surrounding the building.

Ques. 4th. State whether during that time you frequently visited the property; and, if so, what was the condition of it on the occasion of such visits.

Ans. 4th. I visited the property a number of times; sometimes I would find it in good condition and sometimes broken open. I fastened it myself on several occasions.

Ques. 5th. State whether you always fastened the buildings up whenever you found them open.

(Question objected to.)

104 Ans. 5th. I did or had them fastened when a member of the committee.

Ques. 6th. State for what years you were a member of the committee that had this property in charge.

Ans. 6th. 1875 and 1876.

Ques. 7th. State what efforts, if any, the city authorities made to rent the property after they took charge of it, and for what period of time they did rent it, at what price, and how much they got for it.

Ans. 7. We advertised it for rent to the highest bidder; we received two bids; I don't remember whether there were any more; and did rent it to F. B. Toothaker; I don't remember the length of time for which it was rented.

Ques. 8th. Has the city authorities been able to rent it during all the time since they took charge of it?

Ans. 8th. Not for what we considered a reasonable rent. We have had propositions to let people go in there for nothing, and I believe some of them have offered a small consideration for the use of the building.

Ques. 9. What efforts were made to let the public know that the property was for rent; what was done?

105 Ans. 9. It was advertised by posters. I don't know whether it was advertised in the papers.

Ques. 10. State whether the machinery and tools which have been sold by the city since it purchased the same at the sales of Johnson, trustee, and McLure, assignee, have been made for reasonable prices, and state what efforts, if any, the city authorities made to obtain reasonable prices therefor.

(Ques. objected to as incompetent.)

Ans. 10th. The council instructed the committee on manufacturers' loans to sell the machinery, and offers were made the committee and by them submitted to the council. The council considered the prices offered and directed the committee to sell the machinery at the prices offered.

Ques. 11. State whether the prices so obtained were the best prices that could be obtained at the time of the sale.

(Ques. objected to.)

Ans. 11. They were the best prices offered so far as I know.

Ques. 12. State what has been the demand in the market at this place for the last three years for that class of property.

Ans. 12. I don't know that I can answer that question.

106 Ques. 13. State whether there has been considerable of that kind of second-class machinery offered for sale at and in the vicinity of Parkersburg in the last three years.

(Ques. objected to.)

Ans. 13th. I have seen a number of advertisements of that kind of machinery for sale, and catalogues of same. I know that whenever we went to sell that property the persons frequently produced catalogues of that kind of property for sale.

(Answer objected to as not being responsive to the question and refer'ing to things irrelevant, and which should be proved, if at all, by other than oral testimony.)

Ques. 14. State whether there has been any decline in the value of this class of property since September, 1873; and, if so, whether the decline has been considerable or otherwise.

(Ques. objected to as incompetent.)

Ans. 14. While it is generally understood that the prices of machinery have greatly declined since 1873, yet I have never bought any machinery of that kind, and do not know of my own knowledge.

Cross-examination:

107 Ques. 15. What have you known of the prices and value of machinery and the condition of that trade during the last three years?

Ans. 15. During the last three years I have seen machinery bought & sold, but I have not been personally interested in it in any way except as councilman in the sale of the O'Brien machinery.

Ques. 16. The advertisement you speak of having made by posters were distributed in what vicinity?

Ans. 16. Over the city.

Ques. 17. In what branch of business are you now engaged?

Ans. 17. Glass and queensware.

Ques. 18. Is W. A. McCosh a member of the present council?

Ans. 18. He has been since January, 1877.

Ques. 19. Were all sales made by your committe' of this O'Brien property had under the instructions and with the approval of the city council?

Ans. 19. The action of the committee in the sale of the property reported to the council was approved by the council. All the sales made by the committee while I was a member were reported to and approved by the council.

Ques. 20. Is there any police force in this city; and, if so, what
108 has been the number during your term of office?

Ans. 20. There is a police force consisting of four, and this has been the number during my term of office.

And further this deponent saith not.

CHAS. B. SMITH.

Witness, 1 day, $1.50.

George K. Leanord, a witness of lawful age, being first duly sworn, deposes & says:

Question 1st. (By defendant' counsel.) State your residence and occupation.

Ans. 1. The city of Parkersburg, and I am now clerk of the city council of Parkersburg.

Ques. 2nd. How long have you been such clerk?

Ans. 2nd. Since the 15th of January last.

Ques. 3d. Look at the paper now shown you, filed with defendants' answer as Exhibit No. 2, and state in whose handwriting it is, and when the same was made up by you, or about the time?

Ans. 3d. It is in my handwriting, and it was completed in May, 1877.

Ques. 4. State whether that paper at the time you made it exhibited the true state of accounts between the city and the manufacturers' loan to M. J. O'Brien & Bro., according to the books of the city?

109 Ans. 4 It did.

Ques. 5. If the city has paid out any money on account of said loan since you made that statement, or has received any monies from any source on account thereof since that time, please state the amounts, and for what the same was so paid out or received, and the dates of the respective transactions.

Ans. 5. There was none paid out; there was received in August, 1877, $150 for machinery sold, and in September, 1877, $424 for the same purpose; also a note for the purpose, not yet due, for $225.

(This is the note of W. A. McCosh.)

Ques. 6. How long have you resided in Parkersburg?

Ans. 6. Forty-two years.

Ques. 7. About how many legal voters were there within the city limits of the city of Parkersburg, on the 17th day of April, 1869?

(Question objected to, because asking for a legal opinion; because the witness has not been shown competent to testify, and because the city of Parkersburg is concluded and stopped by the record to go into any such question, and for further reasons.) 110

Ans. 7. Thirteen hundred and twenty-six.

Ques. 8. State how you ascertain that number.

(Ques. objected to as immaterial and irrelevant.)

Ans. 8. From the returns of the assessor.

(Answer objected to because higher and better evidence is not produced.)

Ques. 9. Have you generally attended the elections held in the said city for the election of city officers during the past ten years.

(Question objected to as before.)

Ans. 9. I have voted at all of them, I believe, and superintended some.

Ques. 10. From your knowledge of the inhabitants of the city, and the number of persons who have usually voted at the elections so held during the past ten years, how many voters do you estimate there were in the city entitled to vote at city elections on the 17th day of April, 1869, aside from what you know from the assessor's books?

(Ques. objected to as calling for the opinion of the witness, as incompetent, and, further, for the reasons assigned in the objections to question number 7.)

Ans. 10. I should say there were twelve or thirteen hundred.

111 Cross-examination:

Ques. 1st. Has an account been kept by the city of the transactions or sales had of the O'Brien trust property since the time covered by the account filed by the city with its answer, or since May, 1877?

Ans. 1. There has.

Ques. 2. Will you produce & file a copy of that account with this deposition showing the time at which, the prices for which, and the parties to whom the various articles were sold?

Ans. 2. I will.

Ques. 3. Has any of the property been sold since the answer of the city was filed in May last; if so, what amount in gross?

Ans. 3. There has been to the amount of seven hundred and ninety-nine dollars.

Ques. 4. How many members compose the city council?

Ans. 4. The mayor and seven members compose the council.

And further this deponent saith not.

G. K. LEONARD.

Witness, 1 day, $1.50.

It is now and hereby agreed by the counsel for complainant and
112 defendants that the copy of the City laws published by George
Loomis, under the authority of the said City of Parkersburg, may be read and re*ff*er'ed to by the court in this cause for all purposes in which the same are pert*a*ine*s* to the cause.

J. E. REMLEY, a witness of lawful age, being first duly sworn on behalf of the defendants, deposes and says:

Ques. 1st. (By defendant's counsel.) State your residence and occupation.

Ans. 1. Parkersburg, W. Va.; coal dealer; I am also mayor of the city of Parkersburg.

Ques. 2nd. How long have you been mayor of the city?

Ans. 2. Since January, 1876.

Ques. 3. Were you a member of the city council prior to being elected mayor?

Ans. 3. Yes, sir; for the year 1875.

Ques. 4. Do you know the property known as the O'Brien machine-shops?

Ans. 4. Yes, sir.

Ques. 5. Since you have been connected with the city government, state what efforts, if any, have been made by the city authorities for the protection and care of the said shops and the property therein situated, and
what care has been taken thereof by the city.

113 Ans. 5. We have protected it all we possibly can. We have had
locks put on the gates, the doors barred inside, and a lock put on the front door, and the fences repaired several times. The storm blew oft some of the tin on the roof, and we had it repaired and painted. The police have special *have special* orders to see that no one gets in or breaks in. We also have the property insured; that is, the building. I think there is also $1,000 insurance on the machinery.

Ques. 6. State what efforts, if any, the city authorities have made, *if any*, during the last three years to rent the property, so as to make it yield something, and what success has been met with in that direction.

Ans. 6. We made an effort in 1875 to rent the property, and did rent it for two months. We expected to be rented for a year, but the man only kept it two months. The man was F. B. Toothaker. We have had parties wanting to rent it from one to five years to manufacture agricultural implements, but we could not rent it that way. These offers I have just
mentioned were made since the institution of this suit. We had
114 no offers for the renting of the property from parties who would

be responsible for the rent from the time Toothaker left the property to the institution of this suit.

Ques. 7. Please state what efforts, if any, the city authorities have made to obtain fair and reasonable prices for the machinery sold by which it was embraced in the deed of trust from the O'Briens to the city.

Ans. 7. We have had several machinists to examine the machinery, and we have also had catalogues of machinery, second class, sold under similar circumstances. In making the sales we were governed by these. I think the property sold for fair prices.

(Question and answer objected to.)

Ques. 8. State whether the machinery was sold for the highest price that was offered.

(Ques. objected to as immaterial, the best price offered not necessarily being the best price obtainable.)

Ans. 8. Yes; according to the best of my judgment.

Ques. 9. State whether any inquiries or investigations were made to find purchasers at good prices.

Ans. 9. I think there were. I know there were by the committee.

Question (by complainant's counsel). Is your knowledge based simply upon the verbal statements of the committee?

Yes, sir.

115 (All evidence as to statements made by the witness are objected to by complainant's counsel.)

Ques. 10. State whether the machinery was sold for the highest obtainable price at the time it was sold.

(Ques. objected to.)

Ans. 10. Yes, sir.

Ques. 11. State whether there was considerable second-hand machinery offered for sale at and in the vicinity of Parkersburg of this class and kind during the last three years.

Ans. 11. Yes, sir; considerable.

Ques. 12. State whether there has been a decline in the market value & prices of this kind of machinery and tools since September, 1873; and, if so, whether such decline has been considerable.

(Ques. objected to for incompetency.)

Ans. 12. Yes, sir; it has been considerable.

Ques. 13. For what particular trade were said shops originally erected and furnished by the O'Briens?

(Ques. objected to as assuming a state of facts not shown to exist, and for other reasons.)

Ans. 13. For the oil trade & steamboats. For the purpose of manufacturing machinery used in producing oil.

116 Ques. 14. State whether in the latter part of 1873 and the latter part of 1874 there was not almost a total cessation of a demand for oil-well machinery and engines at this place?

Ans. 14. Yes, sir.

(Ques. and answer objected to.)

Cross-examination:

Ques. 1. Were not the price-lists, reffer'ed to by you as having seen, those of property that was being forced upon the market under judicial process or forced otherwise than by judicial process?

Ans. 1. I don't think it was.

Ques. 2. Were not the lists sent out by the assignees of bankrupt concerns soliciting sales?

Ans. 2. I could not say as to that, particularly; one of them was such a list; I don't know whether the others were or not.

Ques. 3. M. J. O'Brien has been prospering in the machine business since his failure, has he not?

Ans. 3. I don't know. He seems to have plenty of work when I have been around there.

And further this deponent saith not.

J. E. REMLEY.

Witness, 1 day, $1.50.

It being too late to complete the taking of these depositions upon
117 this day, the further taking of the same is adjourned until November 12th, 1877, between the hours and at the place mentioned in the caption hereto.

4½ h'rs.

C. D. MERRICK,
Notary Public.

MONDAY, *November 12th*, 1877.

Present, for plaintiff, B. M. Ambler, esq.; defendant City of Parkersburg, C. C. Cole, esq.:

A. N. WILLIAMS, a witness of lawful age, being first duly sworn on behalf of the defendants, deposes and says:

Ques. 1. State your residence and occupation, and state whether you are a member of the city council of Parkersburg, and, if so, how long you have such.

Ans. 1. I reside in Parkersburg, W. Va.; druggist; I am a member of the city council; my term commenced in January, 1877.

Ques. 2. State who were the members of the committee on manufacturers' loan for present year.

Ans. 2. Myself & F. B. Toothaker.

Ques. 3. During the time you have been a member of the city council state what has been the care taken of the O'Brien shops and the property therein situated; whether it has been reasonably and properly cared for.

Ans. 3. I consider that we have taken good care it.

Ques. 4. State whether the doors of the buildings have been left
118 open and the property exposed, or otherwise.

Ans. 4. They have not been left open, but have been broken open several times, and have always been closed whenever my attention has been called to them. I have gone there or four times myself and nailed them up.

Ques. 5. Has any of the machinery been sold by the city during your term of office?

Ans. 5. Yes, sir.

Ques. 6. State what efforts were made by that committee or council to obtain reasonable and proper prices for that which was sold.

Ans. 6. On nearly every piece of machinery that was sold we received bids from several parties for it, and compared those prices with prices of new machinery and second-hand machinery, and then sold it, being satisfied that the prices were all that could be gotten.

Ques. 7. State whether the committee, or members of it, made enquiries for purchasers for machinery, to ascertain to whom it could be sold for the best prices.

Ans. 7. We did; not by advertisement though; we did it by individual effort to parties who we knew wanted the machinery.

Ques. 8. State whether the sales which had been made during your terms of office have been made for reasonable prices, and all that
119 could be obtained at the time.

(Ques. objected to because it is not shown that the witness is competent, and for other reasons.)

Ans. 8. I think so.

Ques. 9. State whether there has been much demand at Parkersburg and vicinity during the past year for that class of second-hand machinery.

Ans. 9. There has been some, but parties who desired such machinery have gone abroad for it, because there were plenty of bankrupt sales of second-hand machinery all over the country.

Ques. (By complainant' counsel.) Upon what do you base your statement as to bankrupt sales taking place as above stated?

Ans. By notices shown me by persons who were desirous of purchasing such machinery from persons purporting to have such machinery for sale.

(The foregoing answer to ques. 9 objected to by complainant's counsel because the witness matter of hearsay and otherwise improper.)

Ques. 10. State whether the city has recently sold any of said machinery to M. J. O'Brien or M. J. O'Brien & Bro.; and, if so, in what manner or through whom it was so sold.

120 Ans. 10. We have sold to M. J. O'Brien a lathe; that I remember; I think that the price of the lathe was $350.

Ques. 11. State how much machinery there is now on hands in said shops.

Ans. 11. There is not very much there.

Cross-examination:

Ques. 1. Did you ever deal in anything else than drugs since you have been in business, or have you had experience in any other business?

Ans. 1. I have not.

And further this deponent saith not.

A. N. WILLIAMS.

Witness, 1 day, $1.50.

W. Vrooman, of lawful age, being first duly sworn on behalf of the defendant, deposes and says:

Ques. 1. (By defendant's counsel.) State your residence & occupation.

I reside in Parkersburg; I am a general business man.

Ques. 2. State when you were last a member of the city council of Parkersburg.

Ans. For the year 1876.

Ques. 3. State whether you know of any efforts made by and on
121 behalf of the city authorities during the time you were a member

of the council, to care for and protect the property known as the O'Brien machine shops, and the machinery therein situated.

Ans. 3. I do. They had appointed a committee on manufactur*ies'* loan, whose special duty it was to keep the property in good repair, and see that it was insured against loss by fire.

(Ques. & answer objected to because the matter referred to, if it exists, should appear of record.)

Ques. 4. State, if you , what was done in the way of keeping the doors of the building fastened.

Ans. 4. The council ordered the committee to have the doors barred on the inside; all the doors but one, is my recollection; and they ordered a padlock to be put on that one door.

(Ques. and answer objected to as above, and because the answer is irresponsive to the question.)

Ques. 5. State whether you ever saw the machinery in the shops or elsewhere.

Ans. 5. I have seen it in the shop.

Ques. 6. State whether the price or market value of that class or
122 kind of machinery did or did not decline after September, 1873;
and, if so, state whether the decline was considerable.

Ans. 6. I am not familiar with the prices of machinery; but, as a business man, I know that all manufactured articles have experienced a natural decline in value since that time.

(Answer objected to as immaterial and improper.)

Ques. 7. State for what particular purpose or branch of trade these O'Brien shops were ere*dit*ed?

(Ques. objected to.)

Ans. 7. They were erected, as I understand, for the purpose of manufacturing machinery.

Ques. 8. What special class or kind of machinery did the O'Brien expect specially to manufacture?

Ans. 8. Rig-irons and tools for boring oil-wells. They made rig-irons, oil-well tools, and engine fittings and supplies.

Ques. 9. Was not their work confined largely to the manufacture of machinery and tools used for boring for and producing oil in the oil regions of West Virginia, and did they not erect their shops with special reference to that business?

Ans. 9. My impression is that it was; and as they came here
123 from Volcano to engage in the business, I am strengthened in that
belief. They had been engaged in that business at Volcano.

(Ques. and answer objected to, as calling for the opinion of the witness, and because the witness does not state upon his own personal, positive knowledge, and also because it is immaterial.)

Ques. 10. Where is Volcano, and how far is it from Parkersburg?

Ans. 10. It is in Wood Co., W. Va., and about twenty miles from Parkersburg by railroad. It is in the oil regions of West Virginia.

Cross-examination:

Ques. 1. Did you, during your term of office, have any special duty to perform in superintending, looking after, caring for, or selling any of the O'Brien trust property?

Ans. I did not.

Ques. 2. Had you anything further to do with the property than as a councilman?

Ans. 2. Nothing further than in my official capacity as councilman. I was not a member of any committee in regard to it.

And further this deponent saith not.

W. VROMAN.

Witness, 1 day, $1.50.

124 F. B. TOOTHAKER, a witness of lawful age, being first duly sworn on behalf of the defendant, deposes and says:

Ques. 1 (by defendant's counsel). State your residence and occupation.

Ans. 1. My residence is Parkersburg, and I am a book-keeper.

Ques. 2. When were you a member of the city council of Parkersburg, W. Va.?

Ans. 2. For the year 1876, and I am still such a member.

Ques. 3d. Have you ever been a member of any committee, affecting the O'Brien loan?

Ans. 3. I was a member of the committee on manufacturers' loan for 1876, and am still a member of such committee.

Ques 4. State what effort the city authorities have made, since you have been a member thereof, to protect the property known as the O'Brien machine-shops, and the machinery therein situated, from damage and loss.

Ans. 4. We have always used every effort we could to protect the property in that building.

Ques. 5. State whether you kept the building fastened up.

Ans. 5. We kept the building fastened up, except when some one would break in there, and that we would remedy as soon as possible.

125 Ques. 6, How did you remedy it?

Ans. 6. By replacing the bolts or locks that were broken.

Ques. 7. State why the roof of the building was repaired.

Ans. 7. At one time, in 1876, I think, a part of the roof was blown off in a storm, and the roof was repaired and the bill ordered to be paid by the council. The roof was afterward painted in order to protect it.

Ques. 8. State what efforts the committee and council made, if any, to have the property rented.

Ans. 8. At the time I rented the property I was the highest bidder for the same. That was before I was a member of the council. We have tried many times to rent it to an advantage to the city. We could not rent it at an advantageous price to the city, because we could not give a written guarantee that they could occupy it for any number of years.

Ques. 9. State what efforts have been made by the city authorities to obtain reasonable prices for the machinery sold by it while you have been a member of the council.

Ans. 9. The committee on manufacturers' loans, to whom all such matters in regard to machinery were refer'ed, have done all in their 126 power to obtain as much as possible for the same, and in all instances have sold to those offering the largest amount, and I think most of it was sold at fair prices, considering the times and quality of machinery. There was seldom any of the machinery sold except when we had more bids than one. In all sales made by us our action was confirmed by the city council.

(Question and answer objected to, as not being responsive to the question, and not setting forth particulars wherein the action of the committee and council consulted, and as stating a conclusion of law, rather than a statement of facts.)

Ques. 10. State whether the committee or council made any inquiries for purchasers for such machinery from time to time; and if so, how they did it?

Ans. 10. I believe they were advertised at one time in the Cincinnati & Pittsburgh papers, I saw it in the Cincinnati papers, but am not positive whether I saw it in the Pittsburgh papers. And since I was a member of that committee the machinery was offered for sale by posters, or by advertisement in the city papers—I don't remember which, but one or the other.

127 (So much of the answer is objected to as is not stated upon the knowledge of witness and which should appear.)

Ques. 11. What knowledge have you of the value of this class or kind of machinery, and what experience, if any, have you had in buying or selling the same or working with it?

Ans. 11. I have been connected with a foundry and machine works for about eleven years. We have manufactured and bought engine lathes, &c. I have been a bookkeeper of the concern, and my knowledge extends to buying and selling.

Ques. 12. State whether the sales of machinery made since you have been a member of the council have been made for reasonable prices and the best that could be made.

(Question objected to.)

Ans. 12. The sales were made for as much as could be obtained at that time. We did the best we could.

Cross-examination:

Ques. 1. How do you know what bids were made for the renting of the O'Brien shops at the time you got them?

Ans. 1. I heard the bids read before the council. I was present when the bids were opened by the council, and my bids being the largest I got the property.

128 Ques. 2. How long did you hold it?

Ans. 2. Three months.

Ques. 3. What was the condition of the property while you had it?

Ans. 3. It was in the same condition as when I got it, and it was in just as good condition when I turned it over.

Ques. 4. What means, if any, did you take to take care of the property during those three months?

Ans. 4. I nailed down the windows and bolted and locked the doors. The bolts were on the inside. The tools and machinery were invoiced to me and I turned them over on the invoice, and as a further security for the small tools I had them carried up stairs and placed in the office and locked the door.

Ques. 5. Have you any invoice of the property now in the buildings?

(Question withdrawn.)

Ques. 6. Was the property during any part of that time lying open or exposed to trespassers while you rented it?

Ans. 6. No, sir; and it wasn't lying open at all.

And further this deponent saith not.

F. B. TOOHAKER.

3 hrs. witness 1 day, $1.50.

129 No other witnesses appearing, on motion of the defendant the further taking of these depositions is adjourned until November 13th, 1877, at the place and between the hours mentioned in the notice hereto annexed.

C. D. MERRICK, *Notary Public.*

NOVEMBER 13TH, 1877.

By order of the defendant the taking of these despositions is closed.

C. D. MERRICK, *N. P.*

NOVEMBER 17TH, 1877.

At the place and between the hours mentioned in the notice hereto annexed. Present for complainant, B. M. Ambler, esq.; for the City of Parkersburg, C. C. Cole, esq.

W. A. McCOSH, a witness of lawful age, being first duly sworn on behalf of the

Ques. 1 (by defendant's coun*cil*, C. C. Cole, esq.). State your name, residence, and occupation.

Ans. 1. W. A. McCosh; I reside in Parkersburg, Wood Co., W. Va.; my present occupation is that of an engineer at the U. S. court-house and post-office.

130 Ques. 2nd. State whether you have purchased any of the O'Brien machinery, either for yourself or others; and, if so, for whom you purchased; and state all about it.

Ans. 2. I purchased the steam-hammer for $350 for M. J. O'Brien at his request. Prior to the time of the purchase he and the committee appointed by the mayor to sell the machinery had some difficulty, and they refused to sell to O'Brien. I went to one of the committee, Mr. Williams, by request of O'Brien, and asked him to sell me the hammer. He asked me for whom I was wanting to purchase. I told him for M. J. O'Brien. He sold me the hammer, and I gave him a check for $350. This was the same amount he gave me for the hammer. He gave me his check for $350 before I purchased the hammer. I deposited the check and then gave my check for $350. The council were anxious to sell the machinery, and I bought an engine for myself and O'Brien as partners as to the engine, and I gave my note for $225 for it and paid the discount, $9 in cash, on the note.

131 (The coun*cil* for complainant appeared and waived cross-examination of witness.)

And further this deponent saith not.

W. A. McCOSH.

Witness, 1 day, $1.50; certificate given.

STATE OF WEST VIRGINIA,
County of Wood, to wit:

I, C. D. Merrick, a notary public in and for the county and State aforesaid, do certify that the foregoing named C. B. Smith, George K. Leonard, J. E. Remely, A. N. Williams, W. Vrooman, F. B. Toothaker, and W. A. McCosh, were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respect*ful*ly subscribed, as before set forth, were reduced to writing by me in the presence of said witnesses respect*ful*ly, and subscribed by said witnesses in my presence, and were taken at the time and place in the annexed notice specified, and at the adjournments from time to time, and the times before set forth.

Given under my hand and official seal, this 17th day of November, 1877.

C. D. MERRICK,
Notary Public.

132 Section 1 of an act to reduce into one the several acts incorporating the town of Parkersburg, in the county of Wood, and define the powers of said town, passed March 17th, 1860.

Be it enacted by the general assembly—

1. That the inhabitants of so much of the county of Wood as is within the bounds prescribed by the act of the assembly entitled, "An act incorporating the town of Parkersburg," passed January the twenty-second, eighteen hundred and twenty; and an act entitled "An act extending the limits of the town of Parkersburg, in the county of Wood, and for other purposes," passed March seventeenth, eighteen hundred and fifty-one, as the bounds and limits thereof, and their successors, shall be and remain, and they are hereby made a body politic and corporate by the name and style of the town of Parkersburg; and as such and by that name may contract, and be contracted with, sue and be sue', plead and be impleaded, answer and be answered unto, and may purchase, take, receive, hold, and use goods and chattels, lands and ten*n*ements and choses in action, or any interest, right, or estate therein, either for the proper use of the said
133 town, or in trust for the benefit of any persons or associations therein; and the same may grant, sell, convey, transfer, let and assign, pledge, mortgage, charge and encumber, in any case and in any manner, in which it would be lawful for a private individual so to do; and may have and use a common seal, and alter and renew the same at pleasure; and generally shall have all the rights, franchises, capacities, and powers appertaining to like corporations in this commonwealth.

Section 8th of an act to extend the corporate limits of the city of Parkersburg, passed November 5, 1863, is as follows:

SEC. 8. From and after the passage of this act the said town shall be known as the city of Parkersburg, and all laws now in force having relation to the said town by its former designation shall have the same relation to the said city.

An act authorizing the mayor and city council of the city of Parkersburg, and the board of supervisors of Wood County, West Virginia

134 to lend their bonds for manufacturing purposes, passed Dec. 15, 1868.

Be it enacted by the legislature of West Virginia, That the mayor and council of the city of Parkersburg are hereby authorized and empowered to issue the bonds of said city to an amount not exceeding two hundred thousand dollars, for the purpose lending the same to manufacturers car'ing on business in or near the said city, in said county of Wood. The said bonds shall run twenty years, and bear interest at six per centum per annum, and they shall be issued upon the recommendation of the following-named persons, who shall be considered the trustees of said loan, that is to say: Daniel R. Neal, Samuel Stewart, Henry Logan, Jas. M. Jackson, Wm. B. Caswell, Thomas D. Wilson, and William N. Chancellor, who shall have power to fill all vacancies that may occur in their number. They shall have power to make loans of said bonds to good solvent compan's or individuals on the following terms, that is to say: when persons engaging in manufacturing shall have invested in their business
135 thirty-five (35) per cent. of the amount proposed to be employed in the business of manufacturing, clear of all liabilities, to be shown to said trustees by affidavits of the applicants, or by other satisfactory evidence, and when such proof is furnished, then said trustees, five members concurring, may lend to such applicants such amounts of said bonds as they may deem proper and judicious, not, however, to exceed sixty-five per cent. of the capital proposed to be used in manufacturing by the applicant; provided, however, when such loans shall be made the interest thereon shall be paid by the borrower semi-annually to the treasurer of said city, and five per cent. of the principal shall be paid annually to the said city by the borrower, to be placed to the account of the sinking fund of said city, until the several loans are paid in full. The said loans shall be secured by deed of trust or mortgage on real estate, or by other satisfactory security, sanctioned by said trustees; and provided also, that no bonds shall be issued under this section until a majority of the qualified voters of said city concur in the same by voting for or against the same at an election to be held for that purpose.

Section 15 of an act to reduce into one the several acts incor-
136 porating the town of *of* Parkersburg, in the county of Wood, and define the powers of said town, passed March 17th, 1860, is in words and figures following, to wit:

SEC. 15. The council shall have authority to levy and collect an annual tax on the real estate and personal property and titheables in the said town, and upon all other subjects of taxation under the revenue laws of the State; provided, that said tax does not exceed one per centum of the assessed value of said property or the sum of two dollars upon every titheable therein, to impose a tax upon all licenses for which a tax is now or may hereafter be imposed for State purposes, in addition to the tax paid the State; which said taxes are to be for the use of the said town, and the council shall have authority to subject any person or persons who, without having paid the taxes imposed by said council for the privilege, shall do any act or follow any employment or business in said town upon which the council are or shall be authorized to impose a tax, to any fine or punishment which they are or may be authorized to impose or inflict, for the enforcement of their ordinances.

137 Section 8 of article 10 of the constitution of the State of West

Virginia, adopted in convention at Charleston, April 9th, 1872, and *and* ratified by the voters of said State on the fourth Thursday of August, 1872, is as follows, to wit:

8. No county, city, school district, or municipal corporation, except in cases where such corporations have already authorized their bonds to be issued, shall hereafter be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for State and county purposes previous to the incurring of said indebtedness; not without at the same time providing for the collection of a direct annual tax sufficient to pay annually the interest on such debt and the principal thereof within, and not exceeding, thirty-four years; provided, that no debt shall be contracted under this section, unless all questions connected with the same shall have been first submitted to a vote of the people, and received three fifths of all the votes cast for or against the same.

138 Sections one and two of article third of the same constitution, is in words and figures following, to wit:

SEC. 1. All men are by nature equally free and independent, and have certain inherent rights of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely, the enjoyment of life and liberty, with the means of acquiring and possessing property and of pursuing and obtaining happiness and safety.

SEC. 2. All power is vested in and consequently derived from the people. Magistrates are their trustees and servants, and at all times amenable to them.

Sections six and nine of article third of the same constitution is in words and figures following, to wit:

SEC. 6. The right of the citizens to be secure in their houses, persons, and effects against unreasonable searches and seizures shall not be violated. No warrant shall issue except upon prob*er*able cause, supported by oath
139 or affirmation particularly describing the place to be searched or the person or thing to be seized.

SECTION 9. Private property shall not be taken or damaged for public use without just compensation, nor shall the same be taken by any company incorporated for the purpose of internal improvement, until just compensation shall have been paid or secured to be paid to the owner. And when private property shall be taken or damaged for public use, or for the use of such corporations, the compensation to the owner shall be ascertained in such manner as may be prescribed by general laws. Provided, that when agreed by either of the parties, such compensation shall be ascertained by an impartial jury of twelve freeholders.

Section one of article two, of the same constitution, is in words and figures following, to-wit:

SEC. 1. Taxation shall be equal and uniform throughout the State, and all property both real and persoual shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other
140 species of *of* property of equal value, but property used for educational, literary, scientific, religious, or charitable purposes, all cem*en*taries and public property, may by law be exempted from taxation.

The legislature shall have power to tax by uniform and equal laws, all privileges and franchises of persons and corporations.

Section three and section six of article second, of the book called the Constitution of West Virginia, which went into operation December 31st, 1862, are in words and figures following, to-wit:

SECTION 3, ARTICLE 2. The right of the citizens to be secure in their houses, persons, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrant shall issue but upon proberable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons and things to be seized.

141 SECTION 6, ARTICLE 2. Private property shall not be taken for public use without just compensation. No person in time of peace shall be deprived of life, liberty, or property, without due process of law. The military shall be subordinate to the civil power.

Section one of article eight of the same constitution is in words and figures following, to wit:

ARTICLE 8, SEC. 1. Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value, but property used for educational, literary, scientific, religious, or charitable purposes, and public property, may by law be exempted from taxation.

The stipulation of counsel, under which the foregoing extracts from the laws and constitutions of the State of West Virginia are made and incorporated in this record, is in words and figures following, to wit:

142 In the Supreme Court of the United States.

THE CITY OF PARKERSBURG
vs. } No. 124.
ISABELLA BROWN & OTHERS.

It is agreed that in making the supplemental record under the stipulation heretofore filed, the clerk of the court below shall omit all the laws relating to the app'lant save: The first section of the act passed March 17th, 1860, entitled "An act to reduce into one the several acts incorporating the town of Parkersburg, in the county of Wood, and defini'g the powers of said town," being chapter five of the city laws of Parkersburg. Also section 15 of said chapter 5 as amended by section one of chapter 8 of the said "city laws." Also section 8 of an act passed November 5th, 1863, and entitled "An act to extend the corporate limits of the city of Parkersburg," being chapter 6 of said laws. And also the act, entitled "An act authorizing the city of Parkersburg to lend bonds for manufactur'g purposes." The clerk shall also insert as part of said record section 8 of article ten, of the book called the Constitution of West Virginia of August 22d, 1872. Also sections

143 one and two, the first clause of section six, and section nine of article third, and section one of article ten of the said book, called the Constitution of West Virginia of August 22d, 1872. Also the first clause of section three and the first clause of section six of article second,

and section one of article 8, of the book called the Constitution of West Virginia which went into operation December 31st, 1862.

Nov. 2, 1882.

(Signed) COOK & COLE,
Att'ys for Appellants.
CHARLES MARSHAL,
WILLIAM A. FISHER,
For Appellees.

I, L. B. Dellecker, clerk of the circuit court of the United States for the district of West Virginia, do certify that the foregoing is a true copy of all the depositions filed by both plaintiff and defendant, and also of all the extracts from laws & constitutions of West Virginia called for by stipulations of counsel in the case of Isabella Brown vs. The City of Parkersburg and others.

In testimony whereof I hereunto set my hand and the seal of said court at Parkersburg, in said district, this 6th day of November, 1882.

[SEAL.] L. B. DELLECKER,
Clerk C. C. U. S., D. W. Va.

144 In the Supreme Court of the United States.

THE CITY OF PARKERSBURG, APPELLANT,
vs.
ISABELLA BROWN & OTHERS, APPELLEES.
No. 124. Oct. 7, 1882.

It is agreed in this case that the clerk of the circuit court of the United States for the district of West Virginia shall make out, certify, and transmit to the clerk of the Supreme Court of the United States copies of the matter below stated, and that when so transmitted the same shall be printed and treated as parts of the record, as though the same had been inserted in the record heretofore transmitted; that is to say:

1. The act of 1868 of the State of West Va., entitled "An act authorizing the mayor and city council of Parkersburg, and the board of supervisors of Wood County, W. Va., to lend their bonds for manufacturing purposes."
2. The several acts of the legislature of the States of Va. and West Va. as contained in the printed publication of the laws relating to said city, entitled "city laws," omitting such parts as may be directed by any stipulation to be signed before said clerk has finished his transcript.

145 3. All the depositions filed in the cause below and the exhibits accompanying them.

COOK & COLE,
Att'ys for Appellant.
WILLIAM A. FISHER,
For Appellees.

(Indorsed:) In the Supreme Court of the United States, Oct. t., 1882. The city of Parkersburg, appellant, vs. Isabella Brown & others, appellees. Mr. McKenney, clerk, &c. Please file this. William A. Fisher, for appellees.

(Indorsement on cover:) No. 124. The City of Parkersburg, appellant, vs. Isabella Brown et al. Addition to record & stipulation of counsel. Supreme Court U. S., 1882. Octo. term. Filed November 8, 1882.

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OFFICE SUPREME COURT U.S.
FILED
DEC [illegible] 1882
JAMES H. McKENNEY, CLERK

Supreme Court of the U. S.

OCTOBER TERM 1882.

THE CITY OF PARKERSBURG,
Appellant,

vs.

ISABELLA BROWN AND
OTHERS, *Appellees.*

No. 124.

WM. A. FISHER,
CHARLES MARSHALL,
B. M. AMBLER.
Counsel for Appellees

WM. A. COOK,
C. C. COLE.
Counsel for Appellant.

Supreme Court of the U. S.

OCTOBER TERM 1882.

THE CITY OF PARKERSBURG, *Appellant*, vs. ISABELLA BROWN AND OTHERS, *Appellees*.	No. 124.

An appeal from the decree of the Circuit Court of the United States for the District of West Virginia.

BRIEF FOR APPELLANT.

Statement of the Case.

The bill was filed by Isabella Brown on the 8th day of December, 1876, on behalf of herself and other holders of the bonds hereinafter mentioned, against the city of Parkersburg and others, claiming to be the *bona fide* owner for value, of $5,000 of the bonds of said city, part of an issue of $20,000, issued in denominations of $500 each, dated on the 1st day of June, 1873, payable to M. J. O'Brien and brother, twenty years after date, with half yearly interest coupons attached, and loaned to the said O'Brien and brother to aid and encourage them in the establishment of a private manufacturing enterprise in Parkersburg, West Virginia, known as machine shops, and by them negotiated, which bonds were alleged to

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The city answered, claiming that the bonds were invalid, because issued in aid of a private enterprise, and in violation of the Constitution of West Virginia, and also because the proceedings prescribed by the act of the Legislature authorizing the issue had not been followed; and denying the city's liability to pay the bonds or interest coupons.

The answer also denies that the property mentioned has been allowed to waste or deteriorate in value by any permissive or authorized negligence on the part of the city authorities, and insists that it has been as carefully protected as the nature of the property and circumstances would allow, and claims that the city could not be charged as a trustee of the property, and offers to submit to any decree in relation thereto that the Court may think proper to make.

Testimony was taken, and on the 23d day of September, 1878, the case was submitted to the Court below, and soon afterwards was argued at Parkersburg, in accordance with the stipulation on page 60 of the printed record.

On the 23d day of September, 1879, the complainant was allowed by the order of the Court below to amend her bill by alleging that the city was estopped to deny its indebtedness on the bonds, and also by adding an alternative prayer in these words: "Or that the said city of Parkersburg may be decreed to pay the said bonds and coupons according to the tenor and effect thereof, and especially that a decree may be passed for the payment of the overdue coupons upon the said bonds." (See page 61, printed record).

On the same day a money decree was entered against the city for the amount of the coupons overdue and unpaid at the time of the institution of the suit. From this decree the city appealed. (See pp. 62 and 63 printed record). The following

Material Facts

appear from ~~the proceedings~~ pleadings, exhibits and testimony.

The city of Parkersburg is a municipal corporation, originally created by an act of the General Assembly of the State of Virginia, which was from time to time amended, and on the 17th day of March, 1860, there was an act passed reducing into one the several acts relating thereto, the first section whereof is as follows:

Be it enacted by the General Assembly—

"1. That the inhabitants of so much of the county of Wood as is within the bounds prescribed by the act of the Assembly entitled, 'An act incorporating the town of Parkersburg,' passed January the twenty-second, eighteen hundred and twenty: and an act entitled 'An act extending the limits of the town of Parkersburg, in the county of Wood, and for other purposes,' passed March seventeenth, eighteen hundred and fifty-one, as the bounds and limits thereof, and their successors, shall be and remain, and they are hereby made a body politic and corporate by the name and style of the town of Parkersburg; and as such and by that name may contract, and be contracted with, sue and be sued, plead and be impleaded, answer and be answered unto, and may purchase, take, receive, hold, and use goods and chattels, lands and tenements and choses in action, or any interest, right, or estate therein, either for the proper use of said town, or in trust for the benefit of any persons or associations therein; and the same may grant, sell, convey, transfer, let and assign, pledge, mortgage, charge and encumber, in any case and in any manner, in which it would be lawful for a private individual so to do; and may have and use a common seal, and alter and renew the same at pleasure; and generally shall have all the rights, franchises, capacities and powers appertaining to like corporations in this commonwealth."

Section fifteen of said last-mentioned act is as follows:

"SEC. 15. The council shall have authority to levy and collect an annual tax on the real estate and personal property and titheables in the said town, and upon all other subjects of taxation under the revenue laws of the State; provided that said tax does not exceed one per centum of the assessed value of said pro~~perty or~~ the sum of two dollars upon every titheable therein, to impose a tax upon all licenses for which a tax is now or may hereafter be imposed for State purposes, in addition to the tax paid the State; which said taxes are to be for the use of the said town, and the council shall have authority to subject any person or persons who, without having paid the taxes imposed by said council for the privilege, shall do any act or follow any employment or business in said town upon which the council are or shall be authorized to impose a tax, to any fine or punishment which they are or may be authorized to impose or inflict, for the enforcement of their ordinances."

On the 5th day of November, 1863, the Legislature of West Virginia passed an act to extend the corporate limits of the city of Parkersburg, etc., the 8th section whereof is as follows:

"SEC. 8. From and after the passage of this act the said town shall be known as the city of Parkersburg, and all laws now in force having relation to the said town by its former designation shall have the same relation to the said city."

On the 15th day of December, 1868, the Legislature of West Virginia passed an act purporting to authorize the issue of the bonds in question, the first section whereof is as follows:

"Be it enacted by the Legislature of West Virginia:

§ 1. That the Mayor and Council of the city of Parkersburg are hereby authorized and empowered to issue the bonds of said city to an amount not exceeding two hundred thousand dollars, for the purpose of lending the same to manufacturers carrying on business in or near the said city, in the said county of Wood. The said bonds shall run twenty years, and bear interest at six per centum per annum; and they shall be issued upon the recommendation of the following named persons, who shall be considered the trustees of said loan, that is to say: Daniel R. Neal, Samuel Stewart, Henry Logan, Jas. M. Jackson, Wm. B. Caswell, Thomas D. Wilson and Wm. N. Chancellor, who shall have power to fill all vacancies that may occur in their number. They shall have power to make loans of said bonds to good, solvent companies, or individuals on the following terms, that is to say: When persons engaged in manufacturing shall have invested in their business, thirty-five (35) per cent. of the amount proposed to be employed in the business of manufacturing, clear of all liabilities; to be shown to said trustees by affidavits of the applicants, or by other satisfactory evidence, and when such proof is furnished then said trustees, five members concurring, may lend to such applicants such amounts of said bonds, as they may deem proper and judicious, not, however, to exceed sixty-five per cent. of the capital proposed to be used in manufacturing, by the applicant, provided, however, when such loans shall be made, the interest thereon shall be paid by the borrower semi-annually to the treasurer of said city; and five per cent. of the principal shall be paid annually to the said city by the borrower, to be placed to the account of the sinking fund of said city, until the several loans are paid in full. The said loans shall be secured by deed of trust or mortgage on real estate, or by other satisfactory security, sanctioned by said trustees. And provided, also, that no bonds shall be issued under this section until a majority of the qualified voters of said city, concur in the same by voting for or against the same, at an election to be held for that purpose."

The second section of said act purports to confer a like power on the supervisors of Wood county, in which Parkersburg is situated, to be exercised in like manner and under like restrictions. The two sections comprise the whole act.

On the 17th day of April, 1869, an election was held in the said city, at which the "proposition to authorize the said city council to issue bonds of the said city to the amount of two hundred thousand dollars, to be loaned to manufacturers" was submitted. The certificate of that election was spread upon the minutes of the City Council in the words and figures following:

"REGULAR MEETING, *June* 1873.

Present, his honor the mayor and Councilmen Farrow, Kirkpatrick, Logan, Stathman, and Smith.

* * * * * *

"On motion, it was ordered that the certificate of the supervisors, inspectors, and clerks of the election held April 17, 1869, under an act of the legislature of West Virginia, authorizing the city council to loan the bonds of the city for manufacturing purposes, be put on the record-book of the proceedings of this council, to wit:

We, the undersigned, having been first duly sworn, do hereby certify that we conducted the election held under authority of an ordinance passed by the mayor and city council of Parkersburg upon the proposition to authorize the said city council to issue bonds of the said city to the amount of two hundred thousand dollars, to be loaned to manufacturers under the provisions of law and said ordinance. That said election was held according to law; that there were cast at said election four hundred and forty-one votes for said proposition to authorize said issue of bonds, and nineteen votes against the said proposition.

Given under our hands this 17th day of April, 1869.

(Signed) W. H. SMITH.
A. L. PEADRO.
THOMPSON LEACH.
SAML. L. ADDISON.
CHARLES RHODES."

See pp. 37–8 printed record.

On the 6th day of September, 1870, the city council passed its first ordinance in relation to the bonds in question in the words and figures following, to wit:

"At a special meeting of the city council of Parkersburg, held at the council chamber, on Tuesday, the 6th day of September, 1870:

Present, his honor the mayor, Messrs. Devlin, Prager, Poole, McFarland, and Neal.

A communication having been received and read to the council from Messrs. M. J. O'Brien and Brother, in regard to the erection of a manufacturing establishment and marine railway within the city limits:

It was unanimously resolved that the council agree when the trustees of the improvement loan certify that the Messrs. O'Brien & Bro. have satisfactorily secured the bonds loaned to them and complied with the act of the legislature authorizing the loan of said bonds that they will release said parties from city taxation on their property to the amount of bonds invested in the same not exceeding twenty thousand dollars; provided, however, the release shall extend so long as the said property shall be used or operated as a manufacturing establishment and marine railway, but not in any event to exceed twenty years."

No other action of the city authorities was had in relation to the bonds in question until the 22d day of April, 1873, and in the meantime, on the 22d day of August, 1872, the people of West Virginia adopted a new constitution, which went into operation on that day, the 8th section of the 10th Article whereof is as follows:

8. "No county, city, school district, or municipal corporation, except in cases where such corporations have already authorized their bonds to be issued, shall hereafter be allowed to become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for State and county purposes previous to the incurring of said indebtedness; nor without at the same time time providing for the collection of a direct annual tax sufficient to pay annually the interest on such debt and the principal thereof within, and not exceeding, thirty-four years; provided, that no debt shall be contracted under this section, unless all questions connected with the same shall have been first submitted to a vote of the people, and received

three-fifths of all the votes cast for or against the same."

At a meeting of the council on the 22d day of April, 1873; an ordinance was passed, in the words and figures following, to wit:

REGULAR MEETING, *Tuesday, April* 22, 1873.

Present, his honor the mayor and all the councilmen.

* * * * * *

Mr. Stephenson offered the following resolution:

Be it resolved by the mayor and council of the city of Parkersburg, that in the event of the firm of M. J. O'Brien and Brother taking from the city a loan of twenty thousand ($20,000) dollars of its bonds authorized under former resolution, dated September 6th, 1870, for manufacturing purposes, and paying punctually the interest thereon and five per cent. (5) of the principal for sixteen years, the said firm be released from any further payments and the balance of said bonds be paid by the city, and the said M. J. O'Brien and Brother are released from making a marine railway.

On a call of the council (Mr. Burk being excused from voting), Messrs. Farrow, Kirkpatrick, Logan, Stathman, Stephenson, and Smith voting in the affirmative, the chair declared the resolution adopted."

See p. 34 printed record.

At another meeting of the city council held on the 13th day of May, 1873, the trustees of said loan mentioned in said act presented a report to the council in the words and figures following, to wit:

"MAY 13, 1873.

" At a meeting of the trustees of the manufacturing and building loan of Parkersburg:

Present, James W. Dils, Samuel Stewart, Jacob B. Jackson, J. N. Camden, and W. N. Chancellor.

James W. Dils was appointed president pro tem.

Ordered, that the resolutions made in regard to the recommendation of the loan of $20,000 on the 30th day of April, 1873, be modified and changed so as to read as follows:

Whereas M. J. O'Brien and W. S. O'Brien, composing the firm of M. J. O'Brien and Brother, are desirous of obtaining a loan of the bonds of the city, under and by authority of an act of the legislature of West Virginia, passed December 15th, 1868, for manufacturing purposes, to the amount of $20,000, for the purpose of aiding them in the erection of a foundry and machine works in the city of Parkersburg; and whereas, for the purpose of erecting these works they have bought of Mrs. Joanna Wait, widow of Walton Wait, deceased, and also from her as the guardian of Bettie C. Wait, infant heir of Walton Wait, deceased, lot No. 80 in said city of Parkersburg on Kanawha street, being 85 by 170 feet, and have received a conveyance from her of said lot, both as the widow of said Walton Wait and as the guardian of Bettie C. Wait; and whereas it appears, by a schedule of personal property of said M. J. O'Brien & Bro., verified by affidavit, and now in the hands of the city attorney, that said M. J. O'Brien & Bro., are the owners of $15,000 worth of personal property in their works at Volcano free of incumbrance:

We, therefore, recomend to the city council of the city of Parkersburg, upon the said M. J. and W. S. O'Brien and their wives, executing a deed of trust to the said city on the said $15,000 worth of personal property, as well as upon the said lot No. 80, the city council to take from Mrs. Joanna Wait, or some one for her, bank stock, with power of attorney to dispose of the same, or solvent bonds to the amount of $5,000, as security that said Joanna Wait, guardian, will obtain from the circuit court of Wood County within two years authority to convey to M J. and W. S. O'Brien, the said lot no. 80 for and on behalf of said ward; and when said authority is obtained, and said deed made, said stock or bonds to be given up, then the city council may deliver to said M. J. and W. S. O'Brien, upon the deposit of the aforesaid collaterals, $10,000 of said city bonds; and when said M. J. and W. S. O'Brien have put a building or buildings on said lot ready for the roof, costing not less than $8,000, when completed, shown by bills rendered and authenticated for same to the council, and when said Joanna Wait, guardian of said Bettie C. Wait, by the authority of the said circuit court of Wood County, has conveyed for and on behalf of her said ward the said lot No. 80 free of incumbrance to said O'Brien and Brother, or made a further deposit of bank stock or bonds to the amount of $8,000 under the conditions aforesaid, as security that she will obtain such authority within two years from the date hereof, and made said conveyance, which shall be held by said city as security for the payment of said bonds and interest until said deed is made by authority of said court, then said city council may deliver to said M. J. O'Brien and Brother the remaining $10,000 of said bonds; and said city council shall take, as a further security for the payment of said bonds and interest, from said M. J. O'Brien and Brother, to be deposited with the city treasurer, their insurance policies, amounting to $14,500, transferred to the said city on their machinery, stock, &c., at Volcano; and when their buildings on said lot are completed, and the machinery thereon erected, then the said M. J. O'Brien and Brother shall have the whole insured to the amount of $15,000, and keep the same so insured for the benefit and security of said city on account of said loan."

(Signed)

JAMES W. DILS.
SAM'L STEWART.
J. N. CAMDEN.
J. B. JACKSON.
W. N. CHANCELOR.

See printed record pp. 34–35.

And on the same day the council passed a resolution in the words and figures following, to wit:

"Upon the incoming of said report of the trustees of the manufacturing and building loan, the city attorney presented to the counsel a trust-deed executed by the said O'Brien & Bro., which is accepted and ordered to be recorded, whereupon it is resolved that upon the execution of the trust by M. J. O'Brien & Bro., the clerk is authorized to issue immediately $10,000, part of city bonds as agreed upon by the resolution of the 22d of April, 1873."

On the same day the O'Briens executed a deed of trust to Okey Johnson, trustee, reciting the ordinance of the 22d day of April, 1873, and the one on the 6th of September, 1870, (for which see pp. 33 and 34 of printed record,) by which they conveyed the real and personal property mentioned in the ordinance of May 13th, in trust, to secure to the city the payment of the interest, and 80 per centum of the principal of said bonds, five per centum annually for sixteen years. Attached to said deed is an affidavit of M. J. O'Brien that the personal property mentioned in it was worth $15,000 which seems to have been the only evidence of its value at the time (See p. 13 to 17 inclusive, of printed record.)

On the 10th day of June, 1873, the city council passed an ordinance in the words and figures following, to wit:

"REGULAR MEETING, *June* 10, 1873.

Present, his honor the mayor, and councilmen Farrow, Kirkpatrick, Logan, Stathman, and Smith.

* * * * * *

The following order relative to the city loaning $20,000 of its bonds to M. J. O'Brien and Bro., for manufacturing purposes, was on a vote of the council adopted, to wit:

Whereas an act of the legislature of West Virginia, passed December 15th, 1868, under certain conditions therein specified, authorized the mayor and council of the city of Parkersburg to issue the bonds of said city to an amount not exceeding $200,000 for the purpose of lending the same to manufacturers carrying on business in or near said city; and whereas by an election held in accordance with said act, in the city of Parkersburg on the 17th day of April, 1869, by Wm H. Smith, A. L. Peadro, and Thompson Leach, conductors, and S. L. Addison and Charles Rhodes, clerks, persons duly authorized to hold said election, to take the sense of the voters of said city, whether they would concur in authorizing said loan, at which election four hundred and forty-one votes were cast for authorizing said loan and nineteen votes against the same; and whereas M. J. O'Brien and Borther, as will appear by reference to former orders of the city council of the city of Parkersburg, have apblied for a loan of $20,000 of said bonds so authorized, and under the conditions imposed by said act of the legislature and former orders with reference thereto, the council have determined to lend to M. J. O'Brien & Bro., bonds to the amount of $20,000. And whereas James W. Dils, Samuel Stewart, J. N. Camden, J. B. Jackson, and Wm. N. Chancelor, the trustees of said manufacturing loan, as provided for in said act, have recommended the said loan of $20,000 to said M. J. O'Brien and Brother under the conditions imposed in their report on file with the clerk of said council, and duly recorded in the records of said council, and by said report it appears that when M. J. O'Brien and Brother (M. J; and W. S. O'Brien), and their wives, executed a deed of trust to said city on the $15,000 worth of personal property mentioned in said recommendation, as well as upon lot No. 80, in the city of Parkersburg, and also deposit with the city treasurer $5,000, in solvent bonds or bank stock, with power to dispose of the same as collateral security, that Mrs. Joanna Wait, guardian of Bettie C. Wait, will, within two years from the date of said recommendation, obtain from the circuit court of Wood County, authority as such guardian to convey to the said M. J. and W. S. O'Brien said lot No. 80, for and on behalf of said ward, the city council may deliver to said M. J. O'Brien and Brother $10,000 of said bonds.

And whereas the deed of trust so recommended is here presented to the council, as well as $5,000 of the capital stock of the Second National Bank, issued to Walton Wait, now deceased, with power of attorney to dispose of the same, executed by J. S. Cook, administrator of Walton Wait, deceased, to be deposited with the city treasurer, as also $14,500 in insurance policies properly transferred, to be deposited with the city treasurer as further security, it is ordered that the said security be, and hereby is, declared satisfactory; and that it is further ordered that $10,000 of the bonds of the city, properly signed by the mayor and clerk of the city council, be delivered to said M. J. O'Brien & Bro.

forthwith under conditions of and in accordance with the act of the legislature passed December, 15, 1868, and the orders made September 6, 1870, and April 22, 1873, made, and intended to be made, by authority of said act of the legislature, and to be controlled by and construed according to its provisions. And it is further ordered, that when said deed is made to lot No. 80, by Mrs. Joanna Wait, as aforesaid, the said S. S. Cook, administrator, may take up said $5,000 bank stock.

On motion adjourned."

(See pp. 36-37 printed record.)

The bonds to the amount of $10,000 were thereupon delivered to the O'Briens. They are of the denomination of $500.00 each with half-yearly coupons attached, and bear date June 1st, 1873. The following is the form of one of the bonds and coupons:

" No. 21.] $500.   [No. 21.

This is to certify that the city of Parkersburg is indebted to M. J. O'Brien and Bro., or order in the sum of five hundred dollars, payable on the 1st day of June, in the year one thousand eight hundred and ninty-three, in the city of Parkersburg, on the surrender of this certificate, with interest thereon in the interval, at the rate of six per centum per annum, payable semi-annually in the city of New York, on the first days of June and December of each and every year, on the presentation of the respective half-yearly coupons attached. This certificate is issued by authority of the act of the General Assembly of the State of West Virginia, passed December 15, 1868.

In testimony whereof the mayor and council of the said city of Parkersburg have caused this certificate to be sealed with the corporate seal, attested by the signature of the mayor and clerk, at the city of Parkersburg aforesaid, in the State of West Virginia, this 1st day of June, in the year 1873.

[SEAL OF THE CITY.]

W. H. McKINNEY, C. S. DESPARD,
Clerk. *Mayor*

Specimen of the coupons attached to the bond.

Coupon No. 40. Bond No. 41.

The City of Parkersburg, West Virginia, will pay the bearer in the city of New York, on the 1st day of June, 1893, fifteen dollars, for six months interest on certificate of manufacturers' loan.

"W. H. McKINNEY,
Clerk."

(See pp. 11–12 printed record.)

On the 9th day of September, 1873, the city council passed another ordinance in the words and figures following, to wit:

"REGULAR MEETING, *September* 9, 1873.

"Present, the Mayor, and Councilmen Burke, Farrow, Hughes, Smith, and Van Winkle.

* * * * * *

"On motion, the following order was made, viz: It appearing to the satisfaction of the council that M. J. O'Brien & Bro. have their buildings which, when completed, will cost more than eight thousand dollars, now up and ready to be roofed, and have therefore complied with the recommendation of the manufacturers' loan, and the former orders of the council in that respect, it is ordered that as soon as Mrs. Joanna Wait, or some one for her, shall deposit with the city treasurer, bonds to the amount of $8,000, or bank stock, with power of attorney to dispose of the same as collateral security, that she will obtain within two years from the 13th of May 1873, the authority from the circuit court of Wood County to make for and on behalf of her ward, Bettie C. Wait, a deed to said M. J. O'Brien & Bro., for lot No. 80 in the city of Parkersburg, that the mayor of the city of Parkersburg is directed to deliver, properly signed by himself, and attested by the clerk of the council, the remaining ($10,000) ten dollars of the bonds of the city of Parkersburg, as provided for by former orders of this council.

"Upon a call of the council, the vote was unanimous in favor of the order as above."

(See page 38 printed record.)

The foregoing are all the ordinances of the city authorizing, or in relation to, the issue of the bonds.

These bonds were negotiated by O'Brien and the complainants became the purchasers at 80 cents on the dollar

On the 26th day of November, 1873, the O'Briens gave another deed of trust upon the real estate hereinbefore mentioned and other real estate belonging to them, to Okey Johnson, as trustee, to secure one Thompson Leach the payment of $3,000. (See pp. 18 and 19 of printed record.)

On the 31st of October, 1874, default having been made in the payment of the $3,000 to Leach, the trustee sold under the power in the deed of trust last above, the real estate therein mentioned, not embraced in the deed of trust to secure the city, and that sale not bringing sufficient to pay Leach's debt, on the 9th of November he sold the lot embraced in the deed of trust to the city, subject to the prior deed of trust to the city, and the city became the purchaser at $300, and on the 8th day of December, 1874, the trustee conveyed the equity of redemption in that lot to the city. (See deed, page 21 of printed record.)

The O'Briens paid but one installment of interest that due December 1st, 1873, and never paid any of the principal to the city, and on the day of 1874 were declared bankrupts. The city continued to pay the interest coupons as they matured until June 1st, 1876. In December, 1874, it caused the trustee to sell a portion of the machinery embraced in the deed of trust to reimburse it for what it had paid out in interest, and to raise the first installment of principal then due under the deed of trust, at which sale $2,342.20 worth of the said machinery was sold and bought in by the city, for which the trustee made a bill of sale to it. (See pp. 44 and 45 of printed record.)

Soon after that J. G. McCluer, the assignee in bankruptcy of the O'Brien's, sold at public sale the residue of the machinery at said shops, some of which was not covered by the deed of trust to the city. That which was included in the trust to the city was sold subject thereto and bought in by the city. The city also purchased at said sale one piece of machinery, which was not included in the trust to it, which seemed of importance to retain at the shops. (See pp. 46 and 47 printed record, and 26 and 27 additional record.)

Afterwards the city sold $909.06 worth of said machinery, and continued to pay taxes and insurance on the property, and paid out money for repairs from time to time, paying out in all, on account of said property up to the time of the institution of this suit, including the interest coupons paid by it, the sum of $2,687.98 It also made continued efforts to rent the property and realize something from it, after the bankruptcy of the O'Brien's, but succeeded in renting it only for a short time, and received $165 as rent therefor. On pages 32 and 33 of the printed record is an account of the city's expenditure and receipts on account of the property, by which it appears that the city had paid out, in excess of what it had received from all sources on account of the property, $1,563.92.

For evidence of the efforts of the city council to protect and preserve the property. See depositions from p. 42 to 51 inclusive, additional record.

That testimony and the proceedings of the council in relation to said property as disclosed by the minutes of their meetings, found on pages 33 to 56 of the printed record, show that the property has been carefully protected, and that an earnest effort was made to keep it under rent. The certificate of the clerk of the council on page 56 shows that the record contains a copy of all the orders and proceedings of the council in relation to said loan or the property mentioned in the deed of trust.

The testimony also shows that when the proposition to authorize the issue of the bonds was submitted to a vote of the people, on the 17th day of April, 1869, there were about 1,200 voters in the city. (See deposition of Geo. K. Leonard, pp. 42 and 43 of the additional record, also deposition of W. N. Chancellor, p. 27, additional record.)

THE QUESTIONS RAISED BY THE RECORD.

FIRST—Are the bonds void because issued for a purpose for which the Legislature could not authorize the levy and collection of a tax?

SECOND—Are they void because issued in violation of the 8th section of the 10th article of the Constitution of West Virginia, adopted on the 22d day of August, 1872?

THIRD—Were not the proceedings under the act of December 15th, 1868, prerequisite to the issues of the bonds, so irregular and defective as to confer no power on the city council to issue the same?

FOURTH—Is the corporation estopped from making the defense that the bonds are void for any or all of the foregoing reasons?

FIFTH—Can the city be charged as a trustee of the property mentioned in the bill?

SIXTH—Has not the city used all the care and dilligence for the protection and preservation of the property that can be required of it under the circumstances?

SEVENTH—Is not the decree so variant from the scheme of the bill as to render it erroneous?

ASSIGNMENT OF ERRORS.

The decree of the Court below, (see pp. 62 and 63 of printed record,) is claimed to be erroneous for the following reasons, to wit:

FIRST--Because it decrees that the City of Parkers burg is indebted for the bonds and coupons in the bill and evidence mentioned, and that said city is responsible for the payment thereof, and that the complainants are entitled to have the same paid by the said city, at maturity.

SECOND—Because a personal decree for money is entered against the said city for the amount of interest coupons alleged to be due on said bonds at the time of the institution of the suit. The decree in this regard is so variant from the scheme of the bill as to be erroneous, even if complainants were entitled to the relief granted. There was a "clear, plain and adequate remedy at law" for what the decree gives.

THIRD—Because the Court did not hold the said bonds void because of the want of power in the Legislature to pass the act of December 15th, 1868, purporting to authorize the issue thereof.

FOURTH—Because the Court failed to hold the bonds void on account of having been issued in violation of section 8 of article 10 of the Constitution of West Virginia, adopted August 22d, 1872.

FIFTH—Because the Court did not hold that the proceedings required by the terms of act of December 15th, 1868, as prerequisite to the issue of the bonds, had not been complied with, and that the bonds were void for that reason.

Sixth—Because the Court held that the City of Parkersburg was estopped from making the defense that said bonds were void for the want of power in the legislature, or the municipality to authorize the issue of the same.

Seventh—Because the Court held that the city was estopped from showing that the bonds were void because of the defective execution of the alleged power assumed to be conferred on it by the said act of December 15th, 1868.

Points of Argument.

First.

The Bonds Being in aid of a Private Purpose are Void.

The act of the Legislature of West Virginia, passed on the 15th day of December, 1868, purports to authorize the City Council to issue and loan its bonds in furtherance of a private enterprise. The Legislature possessed no power to authorize the collection of a tax for such a purpose, and consequently no power to authorize the contracting of a debt therefor.

It is presumed that the legislative intent was to empower the collection of a tax for the ultimate payment of these bonds should it become necessary. This is in excess of the legislative power of taxation, and it follows that the act and the bonds are void.

Loan Association v. Topeka, 20 Wall., 655;
Allen v. Inhabitants of Jay, 60 Maine, 124;
Lowell v. City of Boston, 111 Mass., 454;
Griffith v. Osawkee Township, 14 Kan., 418;
Weismer v. Village of Douglas, 64 N. Y., 91.;
Crampton v. Zabriskie, 101 U. S., 601.

In the case of the *Loan Association v. Topeka*, which in every essential particular seems to be like this case, the Court placed its decision upon the ground that there was no power in the Legislature to authorize taxation for such a purpose.

Referring to it as the second proposition relied upon by counsel, and the one upon which the Court preferred to rest its determination, it is stated in the opinion thus:

> "That proposition is that the act authorizes the towns and other municipalities to which it applies, by issuing bonds or loaning their credit, to take the property of the citizen under the guise of taxation to pay these bonds, and use it in aid of the enterprises of others which are not of a public character, thus perverting the right of taxation, which can only be exercised for a public use, to the aid of individual interests and personal purposes of profit and gain."

After suggesting that where a municipal corporation has property or a fund out of which it can pay the debts it contracts, that it may be within the power of the Legislature to authorize the contracting of a debt to be paid out of such a fund, the opinion proceeds:

> "It follows that in this class of cases the right to contract must be limited by the right to tax, and if in the given case no tax can lawfully be levied to pay the debt, the contract itself is void for want of authority to make it.
>
> "If this were not so, these corporations could make valid promises, which they have no means of fulfilling, and on which even the Legislature that created them can confer no such power. The validity of a contract which can only be fulfilled by a resort to taxation, depends on the power to levy the tax for that purpose.
>
> "It is, therefore, to be inferred that when the Legislature of the State authorizes a county or city to con-

tract a debt by bond, it intends to authorize it to levy such taxes as are necessary to pay the debt, unless there is in the act itself, or in some general statute, a limitation upon the power of taxation which repels such an inference."

The opinion then reviews the cases upon the subject of municipal aid to railroad companies and shows that the validity of such laws have been advocated and sustained on the ground that they are of a public character, and not on the ground of unlimited power of taxation in the Legislature.

Speaking of the nature of private right which would be invaded by the exercise of such an assumed power, it is said:

"It must be conceded that there are such rights in every free government beyond the control of the State. A government which recognized no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but despotism.

"The theory of our governments, State and National, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers."

"There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name."

"To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms."

Upon the question of whether taxation is allowable for the encouragement of manufactories, it is said:

> "But in the case before us, in which the towns are authorized to contribute aid by way of taxation to any class of manufacturers, there is no difficulty in holding that this is not such a public purpose as we have been considering. If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner are equally promoters of the public good, and equally deserving the aid of the citizens by forced contributions. No line can be drawn in favor of the manufacturer which would not open the coffers of the public treasury to the importunities of two-thirds of the business men of the city or town."

The fact that the act provided for the city's taking security by mortgage on the manufacturing establishment, and that this was done, cannot change the principle. That feature existed in the cases of *Allen v. Jay* and *Lowell v. Boston*; but the courts applied the same rule announced in the *Loan Association v. Topeka*, in which last case the two former are cited with approval.

The statute considered in *Lowell v. Boston* was passed for the relief of the sufferers by the great fire in Boston, which occurred in 1872, and authorized the city to issue its bonds and loan them to the owners of the real estate whose buildings had been burned, to enable them to rebuild, and providing that the payment of the bonds should be secured by the parties to whom they were loaned, by mortgage on the real estate on which the buildings were to be erected, substantially like the act now under consideration. Such, also, was the provision of the Statute in the Maine case. But the Court, in each of those cases, enjoined the issue of the bonds on the ground of the invalidity of the Statutes.

In *Griffith v. Osawkee Township*, the Statute authorized the issue of bonds to raise money to loan farmers to purchase seed, because of the scarcity thereof, arising from a widespread failure of the crops in Kansas the previous year. It was held this was not a public purpose, and the issue of the bonds was enjoined.

In *Weismer v. The Village of Douglass*, the action was to recover the amount of over-due coupons on bonds issued by the village to pay for stock in a private corporation, created to build a dam across the Delaware river. The bonds and coupons were held void. The Court found that the purposes of the corporation were private and did not partake of a public nature. In speaking of what is a public purpose, such as will authorize taxation, Folger, J., in delivering the opinion of the Court, says:

> "It may also be conceded that that is a public purpose, from the attainment of which will flow some benefit or convenience to the public, whether of the whole Commonwealth or of a circumscribed community. In this latter case, however, the benefit or convenience must be direct and immediate from the purpose, and not collateral, remote or consequential. It must be a benefit or convenience which each citizen of the community affected may lay his own hand to in his own right, and take unto his own use at his own option, upon the same reasonable terms and conditions as any other citizen thereof. He may not be made to depend for it on the spontaneous actions of others, or to receive it in uncertain degree or manner or roundabout way, or hampered with discriminating distinctions and conditions."

In speaking of whether the Legislature may determine the *purposes* for which a tax may be levied, in the absence of constitutional restrictions, he says:

> "When, however, we come to deal with the power of taxation in reference to the purposes for which it is to

be exercised, we may not admit so much. It cannot but be conceded that there is an end to it somewhere. Every mind must be able to conceive of some legislative attempt to exercise this great and extensive power, which would fail to find warrant either in our written Constitution or in any inherent governmental authority, and which the owner of property subjected to it would have a right to resist."

Since the decision in the *Loan Association v. Topeka* it would seem that the precise question here presented has not been before the Court. But the Court has on several occasions since referred to that case with approval, and it is believed that no point there decided has ever been modified in any manner.

In the United States v. New Orleans, 98 U. S., 381, the point is again adjudged that the legislative grant to issue bonds carries with it the power to levy a tax for the payment thereof, unless the contrary is expressly stated in the act or some general legislation, and the Topeka case is referred to with approval.

The same doctrine is reiterated and the Topeka case again referred to in United States v. County of Macon, 93 U. S. 582.

Hackett v. Ottawa, 99 U. S. 86 is distinguishable from the Topeka case. There the town was authorized by its charter to borrow money and issue bonds for municipal purposes. It passed an ordinance authorizing the issue of bonds for municipal purposes, and the bonds were issued referring to this ordinance In an action on the coupons by a bona fide holder, the town plead that the bonds were given to a private corporation, a different use from that which the ordinance and bond recited. It was held the town was estopped as against an innocent holder, from showing that the bonds were converted to a different purpose from ~~what~~ which the ordinance indicated.

It seems that the bonds were used for the purpose of developing the natural resources of the city, for manufacturing purposes. It is intimated by the court, but not decided, that in view of the provisions of the Illinois constitution and decisions, that might be held to be a corporate purpose. But no such circumstances, constitutional provisions or decisions exist in the present case.

Again, the case of *Cromwell v. County of Sac.* 97 *U. S.*, 272, the question was raised whether a toll bridge intended and used as a public thoroughfare was a public or private enterprise, and it was determined to be the former, and that bonds of a municipality issued to aid in its construction were valid.

In New Orleans v. Clark, 95 U.S., 644, bonds issued to aid a gas company to construct gas works and mains, with a provision, in the contract that if the company did not pay the bonds the gas works should belong to the city, were held valid It was said that the construction of gas works was a public work, and the city could employ a private corporation as well as a private individual to construct them.

In the case of Bnrlington v. Beaseley, 94 U. S., 310, the Court had under consideration a statute of Kansas authorizing towns or counties to issue bonds "for the purpose of building bridges, or to aid in the construction of railroads, water power, or other works of internal improvement." Another statute of the State declared all custom grist mills to be "public mills," and regulated their management.

It was held that bonds issued by the town of Burlington to aid in the construction and equipment of a steam custom mill owned by an individual, were authorized by the statute. This was held to be a public purpose, an internal improvement, as the statute of Kansas declares all mills where the owner grinds for toll or pay, public mills, and regulates the manner in which customers shall be served. The *Topeka* case is referred to and distinguished.

The constitution of West Virginia in force at the time of the passage of the act under consideration, was adopted in 1863. Section one of Article Eight upon the subject of taxation is as follows:

> "Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value; but property used for educational, literary, scientific, religious or charitable purposes, and public property may, by law, be exempted from taxation."

On August 22d, 1872, a new constitution was adopted and went into operation, and was in force when the bonds were issued. Section 1 of Article 10 of that instrument is upon the same subject, and is as follows:

> "Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one specie of property from which a tax may be collected, shall be taxed higher than any other species of property of equal value; but property used for educational, literary, scientific, religious or charitable purposes; all cemeteries and public property, may, by law, be exempted from taxation. The Legislature shall have power to tax, by uniform and equal laws, all privileges and franchises of persons and corporations."

There are no other provisions in either of these constitutions conferring any power of taxation on the Legislature.

Section 9 of Article 10 of the constitution of 1872, is in the following language;

> " The Legislature may, by law, authorize the corporate authorities of cities, towns, and villages, for corporate purposes, to assess and collect taxes; but such taxes shall be uniform, with respect to persons and property, within tha jurisdiction of the authority imposing the same."

It is submitted that this Section is a negative prohibition against the Legislature's authorizing municipal authorities to impose taxes for any but a corporate purpose.

The doctrine seems to be well settled that where the purpose is a private one, the Legislature has no power to authorize taxation, and therefore cannot authorize the creation of a debt.

Whatever difficulty there may be in some cases of determining whether the proposed object be public or private, there would seem to be no hesitation in holding the purpose for which the bonds in the present case were issued, was strictly and entirely private.

Second.

Even if the bonds in question had been authorized and issued for a public purpose, and therefore proper in that regard, they were issued in violation of the provisions of the 8th section of the 10th article of the constitution of the State of West Virginia, which was in force at the time, and are therefore invalid for that reason.

The section of the constitution referred to is in these words:

"No county, city, school district, or municipal corporation, except in cases where such corporation have already authorized their bonds to be issued, shall hereafter be allowed to become indebted, in any manner or for any purpose, to an amount including existing inebtedness, in the aggregate, exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness; nor without at the same time providing for the collection of a direct annual tax, sufficient to pay annually the interest on such debt, and the principal thereof, within, and not exceeding thirty-four years; *Provided*, That no debt shall be contracted under this section, unless all questions connected with the same shall have been first submitted to a vote of the people, and have received three-fifths of all the votes cast for and against the same."

This constitutional provision is addressed to the municipalities as well as to the Legislature, modifying all pre-existing legislation in conflict therewith, and permitting the contracting of debts only upon the conditions prescribed in that section, except in cases where the issuing of the bonds had been authorized by the corporation prior to the time the constitution went into operation.

The constitution was adopted on the 22d day of August, 1872, and became operative on and after that day. The issue of the bonds was authorized by the corporation not earlier than the 13th day of May, 1873, and do not come within the exception mentioned in said section.

List v. the city of Wheeling, 7 W. Va. 501;
Aspinwall v. Commissioners, &c., 22 How. 364.

In List v. the city of Wheeling the constitutional provision above referred to was construed and its effect upon pre-existing laws determined by the Court of of last resort of that State. The facts in that case were substantially as follows:

On the 13th day of February, 1872, the Legislature of West Virginia passed two acts; one authorizing the City of Wheeling to subscribe not exceeding $300,000 to the stock of the Wheeling & Lake Erie Railroad Company, and the other authorizing the subscription of not to exceed $500,000 to the stock of the Wheeling & Ohio Union Railroad Company, and to issue bonds of the city, provided three-fifths of the voters voting at an election to be held for the purpose voted in favor thereof. Each of said acts authorized the city council to submit to the voters by an election, the question of the subscriptions. The council, by two separate ordinances submitted to the voters the question of $300,000 subscription under each act, and more than three-fifths of the votes cast were in favor of the subscriptions. The election was held on the 1st day of June, 1872. On the 22d day of August, 1872, the present constitution of the State was adopted, which took effect on that day. On the 20th day of January, 1873, the city council, by ordinances, appointed three commissioners to subscribe to the stock of each of said companies, and provided for the issue of bonds for the payment thereof when certain prerequisites were complied with by the companies. The council did not provide for the collection of a direct annual tax, sufficient to pay annually the interest on the debt to be created by such subscription or any part thereof. The issue of bonds, if made, would have made the debt of the city in excess of the constitutional limit. The bill was filed by resident taxpayers to enjoin the issue of the bonds.

It was held by the court that the 8th section of the 10th article of the constitution is inconsistent with said acts and modified or repealed them.

That the vote in favor of the subscription and issue of the bonds did not create a contract nor authorize the issue of the bonds within the meaning of the said 8th section of the 10th article, so that the issue of the bonds had not been authorized at the time of the adoption of the constitution.

That the provision of the constitution was addressed to the cities and towns, as well as the Legislature, and prohibited the issue of the bonds except upon the conconditions prescribed in that section. And the issue being in excess of the debt allowed, and the ordinance not providing their payment as required, the attempted issue was held to be in violation of this constitutional provision, and was perpetually enjoined.

The opinion of the court was delivered by Haymond, the Presiding Justice, in which occurs the following ~~extract~~:

" For the purposes of this suit, it must be considered, therefore, that if said section of said article is addressed and applies to the City of Wheeling and all others, and is not simply prospective, and addressed to the Legislature alone, then the making of said subscriptions, or either of them in the bonds of the city * * * is prohibited by said section and article of the constitution and will not be allowed. And, also, though the making of a part of the amount of said subscriptions, or either of them, or any part thereof would not increase the debt of the city beyond the amount specified in said section, still the subscriptions, or either of them, or for any part thereof cannot be allowed, and are unauthorized without the council of the city, providing at the same time, for the collection of a direct annual tax, sufficient to pay annually the interest on the debt, and the principal thereof, within, and not exceeding thirty-four years."

"Can it be said, with any plausibility, that these words, (of the constitution,) are directed only to the Legislature? They are directed, and expressly directed to the counties, cities, etc. Such is the plain language and there is no room for doubt; and all persons, officers, and all departments of the Government, are bound by the prohibition."

The opinion then reviews the Ohio, Kentucky and Missouri cases, and shows the distinctions between the constitutional previsions adjudicated in those cases and the one under consideration. It is then said:

"The city, under its charter, and amendments thereto, could only authorize and direct its bonds to issue by and through its council. The council did not direct subscriptions to be made and the bonds to issue until long after the 22d of August, 1872. The Eighth section of the Tenth article of the constitution applies to these bonds clearly, and they do not come within the exception specified in said section. The plain and evident meaning and intent of the people in the adoption of this section of the tenth article of the constitution was to prescribe a limit beyond which cities, counties, &c., should not go in the contraction of debts."

The judge then examines the question whether the constitutional provision interferes with vested rights or impairs the obligation of contracts as applied to the bonds in question, and holds that it does not, citing *Aspinwall v. Commissioners, &c.*, 22 *How.* 363.

In that case this Court had under consideration a similar provision of the constitution of Indiana. The Legislature of that State in 1848, enacted the charter of the Ohio and Mississippi Railroad Company, and amended it in 1849, authorizing the Commissioners of any county through which it passed to subscribe for stock and issue bonds, provided a majority of the qualified voters of the county voted in favor thereof at an election to be held for that purpose on the 1st day of March, 1849. The election was held on that day and a majority of the voters voted in favor the subscription. In 1852, the Commissioners of Daviess County subscribed for stock and issued the bonds of the county for the amount. In the meantime the State of Indiana adopted a new constitution, which went into operation on the 1st of November, 1851, containing the following provision: "No county shall subscribe for stock in any incorporated company, unless the same be paid for at the time of such subscription; nor shall any county loan its credit to any incorporated company, nor borrow money for the purpose of taking stock in any such company."

The action was brought by a *bona fide* holder of the bonds for value to recover the amount of certain coupons due.

It was held:

1. That the provisions of the railroad charter were modified by the constitution, the charter not importing a contract within the meaning of the clause of the Constitution of the United States prohibiting a State from passing a law impairing the obligation of contracts.

2. That the vote to subscribe did not form such a contract with the railroad company as would be protected by the 10th section of the first article of the

Constitution of the United States. That until the subscription was actually made the contract was unexecuted.

3. That the bonds were issued in violation of the Constitution of Indiana and were therefore void.

In concluding the opinion, Mr. Justice Nelson says:

"We have arrived at the conclusion that both the questions presented to us by the Court below must be answered in the negative, with some reluctance, as, for aught that appears in the case, the subscription to the stock by the Board of Commissioners was made and the bonds issued in good faith to the railroad company, and alse sold by it, and purchased by the plaintiff in confidence of their validity; but, after the best consideration which the Court has been able to give the case, it has been compelled to hold, for the reasons above stated, that the subscription was made, and the bonds issued, in violation of the Constitution of Indiana, and therefore without authority and void."

It is evident from the foregoing authorities that the issue of the bonds in question had not been authorized by the "*corporation*" at the time the new constitution became operative. Even if the vote taken in April, 1869, might be considered as an authorization by the inhabitants or voters, of their issue, that was not an authorization by the corporation. The inhabitants or voters are not the corporation. Upon this subject it is said by Folger, J., in Weismer v. the Village of Douglass, *supra*: "The municipality is the defendant here. The inhabitants are not parties to the suit nor to the bonds. Though the inhabitants of a place be incorporate, they are not the corporate body; the very object of the incorporation is to form a legal body, not to be affected in its duration by a change among the constituent parts of it."

It may be added that by the terms of the act the bonds could only be issued upon the recommendation of certain persons therein named. The issue could not be authorized without such recommendation. This was not made until the 13th day of May, 1873. If the vote was valid for any purpose, which is not admitted, it was only permissive, and not controlling.

Besides, the constitution requires three-fifths of the votes to be in favor of the proposition, while the act requires only a majority of the legal voters. In Jarrott v. Moberly, 103 U. S. 580, a like discrepancy between the act and the constitution was held to invalidate the act.

It being settled that the foregoing constitutional provision applies to the bonds in question, it conclusively follows that they are void, having been issued in violation of at least ~~one~~ ~~three~~ two substantial requirements thereof.

~~Second~~ First— ~~First.~~ "*All questions connected with the same*" were not submitted to a vote and concurred in by three-fifths of the persons voting. If the election held in 1879, was in compliance with the act authorizing it, and if an election held before the adoption of the constitution could authorize the issue of bonds under that instrument, neither of which propositions are admitted, it is clear that the election held was not in compliance with the constitutional requirement. The only question submitted was the broad and general one of whether the city should issue $200,000 in bonds "to be loaned to manufacturers;" to whom the loan should be made, what amount to each person or corporation, in aid of what kind or class of manufacturers, whether the payment of the same should be provided for by a direct annual tax to continue for 10, 20, 30, or any other number of years, were not submitted to the people, as the plain terms of the constitution provide.

Second ~~Third~~ ~~Second~~—The corporation did not at the time of authorizing the issue of said bonds, or at any other time, provide "for the collection of a direct annual tax, sufficient to pay annually the interest of such debt and the principal thereof, within, and not exceeding thirty-four years."

In the case of *New Orleans* v. *Clark*, 95 *U. S.*, 644, this court had under consideration a legislative provision of the State of Louisiana. That act provided that cities and towns should not " have power to contract any debt or pecuniary liability without fully providing in the ordinance creating the debt the means of paying the principal and interest of the debt or contract." While this statute was in force the city of Carrollton issued its bonds in aid of a gas company, but without providing any means of payment. By a subsequent act of the Legislature, Carrollton was annexed to New Orleans and the latter was given the benefit of all property, and charged with the payment of all the debts of Carrollton, specifying particularly the bonds in question.

In a suit upon the bonds by a *bona fide* holder, the city of New Orleans plead as one of its defenses that the bonds were void because their issue was prohibited without at the same time providing for their payment. Upon that question this court spoke as follows:

" This enactment imposed a restriction upon the creation of liabilities by municipal bodies which could not be disregarded. It was intended to keep their expenditures within their means, and its efficacy in that respect would be entirely dissipated, if debts contracted in violation of it were held legally binding upon the municipalities."

It was held, however, in that case, that the subsequent legislative act requiring the city to pay them was a ratification of the contract by the legislative power, and rendered the bonds binding.

The cases in this court holding that a somewhat similar provision in the constitutions of Missouri, Mississippi and Illinois did not have the effect of abrogating prior legislation, are not in conflict with *List* v. *Wheeling*, and *Aspinwall* v. *The Commissioners, &c.*

The provision of the constitution of Missouri of 1865, upon this subject is in the following language:

> "The general assembly shall not authorize any county, city or town to become a stockholder in, or to loan its credit to any company, association or corporation, unless two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein, shall assent thereto."

There is also in the same constitution the following provision:

> "All statute laws of the State now in force, not inconsistent with the constitution, shall continue in force until they shall expire by their own limitations, or be amended or repealed by the general assembly."

In the case of the County of *Calloway* v. *Foster*, 93 U. S., 567, it was held that the above constitutional provision did not operate as a repeal or modification of former legislation. That by the very language, the restriction is upon the legislature only, and not upon the municipalities; that the legislature referred to is the one created by that instrument, and hence the section has a prospective effect only, and does not affect previous legislation.

The same rule is announced in county of *Scotland* v. *Thomas*, 95 *U. S.*, 682; county of *Henry* v. *Nicolay*, 95 *U. S.*, 619, and the county of *Schuyler* v. *Thomas*, 98 *U. S.*, 619.

In Supervisors v. *Galbraith*, 99 *U. S.*, 214, the same construction is placed upon a provision containing the same language in the constitution of Mississippi.

In the Town of Concord v. The Portsmouth Savings Bank, 92 U. S., 625, a provision of the constitution of Illinois was under construction, in the following language:

> "No county, city, town, township, or other municipality, shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to, or loan its credit in aid of such corporation; *Provided however*, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions, where the same have been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption."

The court held that donations or loans of credit are, by that section prohibited under all circumstances, but that subscriptions might still be made if they had been authorized prior to the adoption of the constitution. And the attempted loan in that case was held void, not having been consummated when the constitution went into effect. In the case *Moultrie* v. *Savings Bank* in the same volume, a *subscription* was held valid, as it had passed into a contract prior to the adoption of the constitution.

In *Fairfield* v. *County of Gallatin*, 100 *U. S.*, 47, this court, following a ruling of the court of last resort of Illinois, which had been made prior to the decision in *Concord* v. *The Bank, supra*, but not called to the attention of this court at that time, held that there was no distinction between a donation and a subscription, and that either might be made if it had been properly authorized prior to the adoption of the constitution.

In *Louisville v. The Bank*, 104 U. S., 469, it was held that where a township voted in favor of an issue of bonds on the same day (in the morning) of the adoption of the constitution, they came within the exception of having been authorized by a vote of the people, before the adoption of the constitution.

So it appears that neither this Court, nor the Supreme Court of Illinois, has ever decided that there was any power to issue bonds since the adoption of the constitution of 1870, under pre-existing laws, unless their issue had been authorised prior thereto.

Attention is also directed to the difference between the language of the exception in the Illinois constitution and that of West Virginia In the former it is except "where the same have been authorized under existing laws by a vote of the people," and in the latter it is, "except in cases where such *corporations* have already authorized their bonds to be issued."

But there can be no doubt but the Court of last resort of West Virginia has, in the case referred to, plainly construed this provision ot the constitution of that State as here contended. And that construction seems to be in harmony with the judgment of this Court in *Aspinwall v. Commissioners, &c.*, and subsequent cases. But were there a difference of opinion between this Court and the State Court upon this question, according to the established rule this Court would adopt the construction of the State Court, there being no federal question involved.

Upon this subject it is said in Aspinwall v. The Commissioners, &c.:

> "We have not been able to find that the Courts of Indiana have passed upon this clause of their constitution, and have, therefore, been obliged to expound it with the best lights before us. We should have felt very much relieved if a construction had been given to it by the judicial authorities of the State, and have readily followed it."

See also Fairfield v. County of Gallatin, 100 U. S. 47, and cases there cited.

THIRD.

The proceedings under the pretended authority conferred by the act of December 15th, 1868, were so irregular and defective as to confer no power on the city council to issue the bonds.

First: There was no election by the people such as was required by the act. The act did not contemplate a single submission to ascertain if the voters would authorize the whole $200,000, but that each loan recommended by the trustees should be submittad to the voters.

Second: The proviso is "that no bonds shall be issued under this section, until a majority of the qualified voters of said city concur in the same *by voting* for or against the same, at an election to be held for that purpose." The evidence shows that less than a majority of the voters of the city voted at the election.

In Harshman v. Bates County, 92 U.S. 569, a statute of Missouri of 1868, which authorized the issue of bonds if two-thirds of the qualified voters of the township, *voting at such election*, should be in favor of it, was held in conflict with the constitutional provision of that State, prohibiting the issue "unless two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein, shall assent thereto."

In the subsequent case of County of Cass v. Johnston, 95 U. S. 360, this Court came to the conclusion that the Supreme Court of Missouri had decided in construing statutes of that State containing the same language as is used in the constitution, that it only required a majority or two-thirds, as the case might be, of voters actually voting at the election; and inasmuch as the statute of 1868 had been before that court in several cases and always held constitutional, although that precise point had not been expressly decided, it was held that that was the rule of construction in Missouri, and the case of *Haishman v. Bates County* was overruled. In the case of *St. Joseph Township v. Rogers,* 16 *Wal.* 644, a statute of Illinois containing the same language, was held to require only a majority of the voters actually voting at the election, which is also held upon the ruling of the Illinois cases.

In delivering the opinion of the Court in County of Cass against Johnston, the Chief Justice says:

> "This we understand to be the established rule as to the effect of elections, in the absence of any statutory regulation to the contrary. All qualified voters who absent themselves from an election duly called are presumed to assent to the expressed will of the majority of those voting, unless the law providing for the election otherwise declares. Any other rule would be productive of the greatest inconvenience, and ought not to be adopted, unless the legislative will to that effect is clearly expressed."

In Douglass v. County of Pike, 101 U. S. 677, the decision in Cass County v. Johnston is adhered to, although in the mean time the Supreme Court of Missouri had held the act of 1868, unconstitutional upon this ground in two cases where the precise point was made. The main reason given for such adherence is that the former decisions had become and were a rule of property in that State at the time of the sale of the bonds in question. But it is said in that case that the new decisions would be binding and followed in all cases of bonds issued after their promulgation.

Whether under the decisions of this court as they now stand, the proper construction of the language used in the Missouri constitution be an open one or not, is immaterial to this case, as under the rule laid down in *County of Cass v Johnston*, there can be no doubt what is the proper interpretation of the language used in the act under consideration. As if the Legislature had in view the very principle announced in that case, that absence from a duly notified election should be construed to be acquiesence in the affirmative of the poposition to be voted for, it is declared in that act that the power to issue the bonds shall not exist "until a majority of the qualified voters of said city concur therein *by voting*," making active acquiesence necessary by the very terms of the Statute.

3. The act requires that the contract between the city and the borrower shall require the latter to pay to the city treasurer the interest semi-annually and 5 per centum of the principal annually. The clear intention is that the borrower should agree to pay and secure the payment to the city of the whole loan in 20 years, the time the bonds have to run. The contract actually made re-

quired the borrowers to pay the interest and 80 per centum of the principal only. The Statute authorized no such contract, and the bonds are void for that reason.

FOURTH.

Estoppel.

First—If the statute confers no power to issue the bonds there can be no *bona fide* holding and no estoppel.

Thomas v. City of Richmond, 12 Wal. 365;
Topeka v. Loan Association, 20 do 655;
Ottawa v. Perkins, }
Kendall County v. Post, } 94 U. S., 260;
Township of Oakland v. Skinner, do 255;
United States v. County of Macon, 99 do 582;
Anthony v. County of Jasper, 101 do 693;
Wells v. Supervisors, 102 do 625;
Ogden v. County of Daviess, do 634;
1 Dillon on Mun. Corp. § 381.

In the case in the 12 Wallace, the City of Richmond issued scrip which was held void for want of power in the municipal authorities. It is said in that case that persons dealing with such corporations are chargeable with the notice of their powers, and as such have notice of and are participators in the wrong committed, and have no right to complain, being in *pari delicto*.

In the *Loan Association* v. *Topeka*, speaking upon the doctrine of estoppel, the court say:

> "We do not attach any importance to the fact that the town authorities paid one installment of interest on these bonds. Such a payment works no estoppel. If the legislature was without power to authorize the issue of these bonds, and its statute attempting to confer such authority is void, the mere payment of interest, which was equally unauthorized, cannot create of itself a power to levy taxes, resting on no other foundation than the fact that they have once been illegally levied for that purpose."

The case of the *Township of Oakland* v. *Skinner*, turned upon the construction of the language of the statute. It was held not to authorize the issue of the bonds. The court say:

"We have held that there can be no *bona fide* holding where the statute did not in law authorize the issue of the bonds. The objection in such case goes to the point of power. There is an entire want of jurisdiction over the subject. It is not the case of an informality, an irregularity, fraud or excess of authority in an authorized agent. Where there is a total want of authority to issue the bonds, there can be no such thing as a *bona fide* holding."

[redacted] *Ottawa* v. *Perkins*.
Kendall County v. *Post*.

In these cases the bonds recited the act and the election and that the bonds were issued in pursuance of the act and vote. The act was published among the printed statutes of the State of Illinois. These were actions on bonds issued to a railroad company under the act above referred to. The defense was that the act never was constitutionally passed. This defense was sustained and the bonds were declared void in the hands of *bona fide* holders.

United States v. *County of Macon*, was an application for a mandamus to compel the municipality to levy a tax to pay a judgment rendered on certain bonds issued by the county of Macon.

The act in question authorized issue of bonds in aid of a railroad and limited its power to provide payment to an annual tax of one-twentieth of one per cent. The general law authorized the levy of one-half of one per cent. Both were not sufficient to pay bonds. The holder obtained judgment and then by mandamus sought to compel levy of tax to pay it. It was held the court could not compel levy of tax beyond the power given the municipality in the statute. *Loan Association* v. *Topeka* is referred to and approved. The court say: "While there has undoubtedly been great recklessness on the part of the municipal authorities in the creation of bonded indebtedness, there has not unfrequently been gross carelessness on the part of purchasers when investing in such securities. Every purchaser of a municipal bond is chargeable with notice of the statute under which the bond was issued. If the statute gives no power to make the bond, the municipality is not bound. So, too, if the municipality has no power, either by express grant or by implication to raise money by taxation to pay the bond, the holder cannot require the municipal authorities to levy a tax for that purpose."

In Anthony v. County of Jasper, it is said:

> "Dealers in municipal bonds are charged with notice of the laws of the State granting power to make the bonds they find on the market. This we have always held. If the power exists in the municipality, the *bona fide* holder is protected against mere irregularities in the manner of its execution, but if there is a want of power no legal liability can be created."

In *Louisiana* v. *Wood*, 102 *United States* 294, the same principle is reiterated.

In both of the cases of *Wells* v. *Supervisors*, and *Ogden* v. *County of Daviess*, it was held that the statutes under consideration did not authorize the issue of the bonds. In the first case it is said:

> "The controlling question in this case is whether there was authority in law for issuing the bonds to which the coupons sued on were attached. If there was not, it has always been held that no recovery can be had in an action on the bonds or coupons."

And in the last case the same doctrine is repeated in these words:

> "We have always held that every holder of a municipal bond is chargeable with the notice of the provisions of the law by which the issue of his bond was authorized. If there was no law for the issue there can be no valid bond."

Upon this question of estoppel the following language is used by Folger, J., in *Weismer v. The Village of Douglass:*

> "It is urged that there has been worked an estoppel, preventing the assertion by the defendant of the invalidity of these bonds. It is conceded by the appellant that where an act is beyond the scope of corporate power a municipality cannot be debarred from raising that objection by any subsequent conduct of its officers and agents. But it is contended that the inhabitants of the municipality may be estopped and bound by acts of acquiescence and approval, after knowledge of the facts, and that their acts may thus affect the corporate body of which they are the elements.
>
> "The municipality is the defendant here. The inhabitants are not parties to the suit nor to the bonds. Though the inhabitants of a place be incorporate, they are not the corporate body; the very object of the incorporation is to form a legal body, not to be affected in its duration by a change among the constituent parts of it. If it should be granted that the inhabitants may be estopped, that cannot affect the defendant; it is a political entity quite different and apart from the varying multitude who are from time to time the inhabitants of the territory within its corporate bounds. Their acquiescence cannot affect it. And if every one of the inhabitants of the village of Douglas who are *sui juris* at the time when the payments of the interest were made upon them, had joined affirmatively in all those acts, that could not conclude the present population as a body, some of whom have, doubtless, come in since then, or come to majority since then, or in many other ways now come into the category of inhabitants."

2. Estoppel by Recitals.

Where the bonds or the ordinances of the municipality, authorizing the issue, recite that the formalities necessary to confer power have been complied with, if such officers are the proper judges of such facts, the municipality is thereby estopped. But where there are no such recitals no estoppel exists. Unless all the formalities prerequisite to the power to make the issue have been complied with, the bonds are void; and where there are no recitals in the bonds or ordinances, the purchaser is chargeable with notice of all defects in the exercise of the power.

McClure v. Township of Oxford, 94 U S., 429;
Block v. Commissioners, 99 U. S., 686;
Buchanan v. Litchfield, 102 U. S., 278.

The case of McClure v. The Township of Oxford was this:

An act of the Legislature of Kansas authorized the issue of bonds by cities, towns, &c., to aid in building bridges, approved March 1st, 1872, but, by its terms, was not to go into operation until after its publication in the *Kansas Weekly Commonwealth*. This publication did not take place until March 21st. The act required an election to authorize the issue, of which thirty days notice should be given. The bonds were dated on the 15th of April, 1872, and referred to the act and the election, as held on the 8th of April. The bonds were held void, because thirty days' notice of the election was not given, and that the purchaser was chargeable with notice of the time when the act was published, and if he had ascertained that, he would have ascertained that no valid election could have been held on the 8th of April. The following are excracts from the opinion of the court:

> "Municipal officers cannot rightfully dispense with any of the essential forms of proceeding which the Legislature has prescribed for the purpose of investing them with power to act in the matter of such a subscription. If they do, the bonds they issue will be invalid in the hands of all that cannot claim protection as *bona fide* holders.
>
> To be a *bona fide* holder one must be himself a purchaser for value without notice, or the successor of one who was. Every man is chargeable with notice of that which the law requires him to know, and of that which, after being put upon inquiry, he might have ascertained by the exercise of reasonable diligence. Every dealer in municipal bonds, which, upon their face, refer to the statute under which they were issued, is bound to take notice of the statute, and of all its requirements."

In *Block v. The Commissioners*, it said:

> "The bonds, it is true, contain no recitals. If they did contain a recital that an election had been held, and that a majority had voted for the issue of the bonds the recital would have been conclusive upon the county, and a purchaser would have needed to look no farther than to the act of the Legislature. This is according to all our decisions. But in the absence of any recital it may be conceeded he was bound to inquire whether a majority vote had been returned for the issue of the bonds. But where was he to inquire? Plainly only of of the board whose province it was to ascertain and declare the result of the election. Had he gone to their records, they would have shown that the popular vote was in favor of the bond issue."

In Buchanan v. Litchfield there were no recitals of the material facts that the bonds were not in excess of the constitutional limit, either in the bonds or ordinance authorizing the issue, and it was held that the town might invalidate the bonds by showing that they were in excess, which was done and the bonds held void.

Former cases on the same subject are reviewed, and held to be in conformity with this rule. The form of the bond in that case is substantially the same as the Parkersburg bonds now in question.

It is submitted that there is no estoppel to any defence made in the answer.

FIFTH.

The city cannot be charged as a trustee of the property.

A municipal corporation may take and hold in trust property for purposes germane to its creation and existence, but not for private purposes merely. Nor can it be compelled to execute such a trust.

Vidal v. Girard's Executors, 2 How., 128;
Mayor v. Ray, 19 Wall., 468;
In the matter of Howe, &c., 1 Paige., 214;
Angel and Ames on Corps., §168;
1 Dillon on Mun. Corp., §437 to 443 inclusive and notes;
Jackson v. Hartwell, 8 Johns., 422;
2 Kent's Com., 280;
Sutton v. Cole, 3 Pick., 232.
Chopin v. School Dist. 35 N.H. 445
Berrian v. Mayor &c. 4 Robertson. 553
Herzo v. San Francisco 33 Cal. 134.

Inasmuch as a municipal corporation is a part of the government, and is instituted for governmental purpurposes only, it may be questioned whether even the Legislature could clothe it with power to engage, in any manner, in transactions of a purely private nature, in no way connected with the administration of public affairs, or some purpose within the scope of its duties.

Philadelphia v. Fox, 64 Pa. St., 169;
2 Dillon on Mun. Corp., §443.

Trustees may reimburse themselves for money advanced for the benefit of the estate or the cestuique trust.
Perry on Trustees § 485
Burr v. McEwen et al 1 Bald. C.C. 154

To contend that accepting the trust of the property and trying to preserve it for payment of the bonds would in any way estop the city or render it liable to the bondholders either for the payment of the bonds, or for any sum in excess of what the city has actually received from the property, would be to contend that it might incur indirectly a liability which it could not directly.

The city has no interest in interposing any obstacle to the bondholders' resorting to the property mentioned in the trust for the payment of the bonds. Its answer offers to submit to any decree the Court may think proper in relation to the property. It is submitted that the evidence shows that the city has endeavored to protect and preserve the property with as great a degree of diligence as could be required, and that in any decree which it may be proper to make in relation to the property, the city should be protected in the sum it has paid on the bonds and in protecting the property, in excess of what it has received.

The testimony of the following witnesses, viz,:

C. B. Smith, pp. 40, 41 and 42, Additional Record.
G. K. Leonard, pp. 42, 43 and 44 " "
J. E. Remeley, pp. 44, 45 and 46 " "
A. N. Williams, pp. 46 and 47 " "
W. Vrooman, pp. 47, 48 and 49 " "
F. B. Toothaker, pp. 49, 50 and 51 " "
W. A. McCosh, p. 51 " "

shows the effort and care of the city officials in relation to the property, and that after the giving of the deed of trust by the O'Briens to secure the bonds, and before they became bankrupt, for various causes, the value of the property greatly deteriorated

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It would seem that the scheme of the bill is to reach the property for the payment of the bonds, on the supposition that the city is not liable for the payment of them. On any other theory the complainents would have no right to come into a Conrt of Equity. If the bonds were valid, the bondholders would have a "plain, clear and adequate remedy at law."

In this view the decree below seems to be entirely variant from the scheme of the bill.

WM. A. COOK,
C. C. COLE,
For Appellant.

OFFICE SUPREME COURT U.S.
FILED
DEC 5 1882
JAMES H. McKENNEY, Clerk.

16-487

SUPREME COURT OF THE UNITED STATES.

No. 124.

THE CITY OF PARKERSBURG, APPELLANT,

VS.

ISABELLA BROWN, HARRIET E. BROWN, WILSON, COLSTON & CO., THOS. H. GAITHER, SAMUEL K. GEORGE, J. C. M. POWELL AND GEORGE M. MAYO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Brief of VAN WINKLE & AMBLER, of Counsel for Appellees.

SUPREME COURT OF THE UNITED STATES.

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THE CITY OF PARKERSBURG, APPELLANT,

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ISABELLA BROWN, HARRIET E. BROWN, WILSON, COLSTON & CO., THOS. H. GAITHER, SAMUEL K. GEORGE, J. C. M. POWELL AND GEORGE M. MAYO.

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STATEMENT.

(All references are to side pages.)

The complainant's bill was filed to assert and secure the rights of the holders of $20,000 of bonds issued by the city of Parkersburg, dated June 1st, 1873, bearing interest.

In the year 1868 the Legislature of West Virginia authorized that city to issue what are known as "Manufacturer's Bonds." The act prescribes that a vote shall be had, that Trustees shall recommend the loan and that security be taken for the payment.

Apart from the recital in the bonds, that the issue was made "by authority of the act," the Council certifies, on June 10, 1873, that on April 17th, 1869, the vote had been taken; that the Trustees had recommended the loan; that adequate security had been given, and that the security was satisfactory. (Rec. side pp. 25-6-7.) On that day $10,000 are ordered to be issued to M. J. O'Brien & Bro. The recommendation of the Trustees is set forth in full (p. 85), and a record of the vote preserved (p. 93). On Sept. 9th, 1873, the remainder of the bonds, to the amount of $10,000, are ordered to be delivered to M. J. O'Brien & Bro. (p. 94). The bonds so issued are taken by O'Brien & Bro., and sold in Baltimore to the present holders, or their assignors, who paid for them in good faith. The terms of the act were literally complied with, unless it be that the bonds should have been *delivered* by the Trustees, instead of having that ministerial act performed by others, at their direction. (96 U. S. 341.)

"The said bonds were to be secured by a deed of trust, or other satisfactory security." This also was done. Prior to the issue, M. J. O'Brien & Bro. gave (May 13th, 1873) a trust on a lot of ground in Parkersburg and $15,040.38 of machinery at Volcano, from which place the city had induced O'Brien & Bro. to remove their works to Parkersburg (Addition, side p. 6). The city got a trust covering the lot and $15,040 of personalty, and, also, $5,000 of bank stock, before issuing the first $10,000. (Rec. 90-1-2): On the lot were afterward erected buildings worth $8,000, which was additional security, before the second issue of $10,000 was made. So that, reckoning the lot at the $5,000 placed upon it by the city, the security approved by the city, as shown by her records, was over $28,000, to cover the entire sum of $20,000.

On January 19th, 1874, a committee reports to the city "that by reason of the removal of the personal property of M. J. O'Brien & Bro. to Parkersburg, it became necessary to renew *some* of the insurance," and the same was renewed to the amount of $15,000. (p. 97.)

The security given by the O'Briens is further shown by a deed of trust (p. 33), the object of which is declared to be (p. 35) "*to secure the faithful performance* by the O'Briens in their payment" of the bonds. The act of Legislature provided that the *loans* (bonds) "shall be secured by deed of trust or mortgage on real estate, or by other satisfactory security, sanctioned by the Trustees."

It will be observed that the trust, neither by the terms of the act nor of the deed, is to *indemnify* the city, but *to pay the bonds.*

The bonds are $500 each, with "half-yearly" coupons, payable December 1st and June 1st. The O'Brien's paid *to the city* the amount of the first coupons, $600, and never paid anything after that; but the city gave no notice of the default to the bondholders, and regularly paid each installment out of her own treasury, June and December, 1874, and June and December, 1875. She first raised any question upon refusing payment on June 1st, 1876. (City's answer, p. 73.)

Meantime, two years before bondholders learn of any trouble, M. J. O'Brien & Bro. make their first default—in June, 1874 (p. 101). On November 10th, 1874, the Mayor stated that he had consulted with eminent counsel, and by his advice had directed the Trustees to sell under the trust (p. 104). The property was sold by the city's order, and she bought it in, paying *three hundred* dollars more than the lien. She took the real property at $20,300 (p. 50) and accepts a deed in her own name therefor. (p. 50.) She purchased certain personalty, likewise subject to the trust, for $2,342.80, making the amount bid, and at which she purchased, $22,642.80 (p. 109-10-12). The O'Brien's became bankrupt. At their assignee's sale, the city purchased, under her lien, property to the further amount of $1,601.14 (p. 108-115.) For all this property the city paid only the $300 in excess of the lien, claiming that as she was liable for the bond, she was entitled to purchase under the lien. The total property so acquired by her, and *never paid for*, was $23,943.94. (Add. Rec. 45-6-7.) She took possession of the property (p. 116), and rented it for three months (118), taking bond for $5,000, conditioned for the safety of the property (119). The O'Briens delivered all the property to the city in good order. (Add. Rec. 26.) On June 13th, 1876, the city orders that the bond-holders be notified that she had repudiated (p. 133).

On December 24th, 1874, the assignee in bankruptcy of the O'Briens sold part of the Trust's property without objection from the city (add. Rec. 44), the city purchasing some of it, "as a credit to be entered upon the deed of trust." (Add. Rec. 47.)

After the property was received by the city from its tenant, Toothaker, July 29th, 1875 (Rec. 125), and up to the 16th day of August, 1877, the premises were left open, delicate machinery exposed, perishable property neglected, and depredations invited by reckless want of care; though while *responsible tenants had possession* (prior to July, 1875) everything was kept in order. (Dep. of M. J. O'Brien, Add. Rec. 50-63.) The O'Briens confirm the statement, reiterated upon the city records, but denied by her answer, that the property covered by the trust was worth about $25,000. (Add. Rec. 70-1; 58-60.) The property was dismantled, portions of the machinery and appliances being sold by the city after her purchase, and articles to amount of $799 being so sold after the bill was filed. (Add. Rec. 111.) A member of the Council buys from the city some of the property (A. R. 130) (Ib. 107 ques. 18), and by his interposition she gets about half price for a valuable portion. (Add. R. 76.)

No account of this property is rendered by the city. She holds on to all of it, and denies that the *cestui que trustent* have any interest in her manner of dealing with her own.

The bill adduces all these matters, charges that the city bought the property, clothed with the trust, wasted most of it, and holds on to the rest, while denying her liability. It pleads her conduct as an estoppel; and among other relief, prays that the city may be decreed to pay the bonds, and adds the general prayer.

The answer denies the validity of the bonds, and further denies that the bond-holders have any rights as to the property held by her. A replication is filed (p. 138). "The Court being of opinion that the city is indebted for the bonds and coupons, and that the city is responsible for the payment thereof, * * * it is decreed that the complainants are entitled to have" their bonds paid.

ARGUMENT.

It is contended that these bonds are void, because the Legislature had not the power to authorize the issue.

Loan Association vs. Topeka 20 Wall. 655

Were that proposition conceded (but we concede nothing,) the face of the bonds would be the measure of the City's liability in this case.

In no decision of this Court has there been an authoritative, expression upon the question: how far is the corporation estopped to deny its liability,by reason of its acts and conduct occurring AFTER the bonds have passed into the hands of innocent purchasers causing the holder to be misled and prejudiced, and transferring to the city the identical security of which it deprived him?

That question is presented by this record.

It has long been settled, that where the power to issue exists, a recital that the issue is made pursuant to the authority conferred, is conclusive of the FACTS fairly covered by such recital, Coloma vs. Eaves 92 U. S., 484, while the payment of interest AFTER the issue is made, works no estoppel as to bonds void for want of power. Loan Association vs. Topeka, SUPRA.

But we have been unable to find a case, in which the city, AFTER the bonds have in fact been issued.

1. Misled and prejudiced the holder, and prevented him from saving himself by a resort to ample security; or

2d, received the full value of the bonds, in consideration of paying them off.

Both of these features are peculiar to the cause now presented. Upon either the appellees might confidently rest their case. Each creates a liability independent of the (original) validity of the bonds as such. The one raises a question of estoppel, the other a mixed question of estoppel and contract.

For greater clearness we mark these two characteristics, but we do not lose sight of a third very material point—the city of

Parkersburg has not only appropriated the property which should have been applied to pay our bonds, but she has rendered no account of it and cannot account for it. Yet she has time and again stated it was worth more than the face of the bonds.

If these bonds were void, the city had no right to touch the security, because only persons interested in the bonds could resort to that property. In 1874, she did not hesitate to turn immediately to that quarter to save herself. She took the iniative—she ordered the property to be sold by Okey Johnson, trustee, and she bought it in. She affirmed on the day the realty was sold, that it was worth over $20,000 (p. 50). She has a part of the personalty sold for $2,341 (p. 110). She also buys that. The Bankrupt Court orders a sale of personalty which the city claimed was covered by the trust. She bought a PART of that for $1,601,45; and stopped buying, either because she had not the effrontery to take more property "AS A CREDIT" upon the trust, or because she did not care to keep the trust property together.

By her charter (Add. rec. p. 132)she had the same right to buy realty or personalty that a natural person had. UNDER HER TRUST, as she several times repeats, she took at her own price property worth $23,943 94. Under her charter she had the power to pay for what she got, an incident to the power to purchase and hold. Yet, her own records and the deeds she took in her own name show, that she did not pay one cent of the $23,943 94. She THEN refused to pay the consideration to the officers making the sales, on the ground that *she proposed* to pay to the bondholders the money (a less amount) NAMED IN THE BONDS. For 18 months she honestly performed the condition on which she got the property; she paid the coupons as they became due—and continued to make the bondholders feel secure, while she stripped the property and rendered it valueless. Then, and not till then, did she repudiate. She gave us no notice of the sale, which she had ordered. She appropriates and wrecks our security before we find that it is in danger. When we first learn of these facts, the property has been squandered and she even refuses to let us have the remnant then on hand. Considering she got over $23,000 with the understanding that she would pay us $20,000, she ought to congratulate herself that she was not required to pay a premium.

She now says, by her answer, that she took the property in order to indemnify herself for expenditures theretofore made. That cannot be a fact, because she continued to pay the coupons for months afterwards. That pretext will not avail, for another reason. She assigns to the officers making sales, a different reason and a different purpose, at the time of the purchase.

McCarthy vs. R. R. Co. 96 U. S. 258.

A trustee making sale is the mutual agent of all persons interested in the trust subject. Hence, the statement that the city would pay the amount of the bonds, instead of paying the money into the hands of the trustee, is binding upon her under the rule in McCarthy v R. R. Co.

Adams vs. Adams 21 Wall. 185.
2 Minors Inst. 222-286.
Stove works vs Gray 9 W. Va. 469 72.

Again, she claims that she is entitled to hold on to all the property by virtue of her rights under the trust, but that the trust was given to INDEMNIFY HER against liability upon the bond, and as she is NOT liable to pay ANY PART OF the bonds, the holders cannot be let in to reach the trust, because she has no rights to which they can be subrogated!

In other words: "She has no right to resort to the trust, but HOLDS the property by virtue of that right."

We submit this is a fair statement of her position. It shows that she is driven to acknowledge, either that she has no title to the property which she took in her name, or that she is bound for the price which she agreed to pay.

If, as she argues, she holds that property wrongfully, she is Trustee for the parties rightfully entitled. She is Trustee DE SON TORT. To escape the consequences of that predicament, she pleads a want of power to execute a trust; but the demand of the bondholders is not that she finish her work of destroying the property, but that she give an account of her administration, and settle for what she has done. This she cannot do.

She has received articles by inventory description and name, with specific prices attached, amounting to many thousands of dollars. We try to follow the property, and ask for an account. She replies that before suit she received from sales some $909, and so determined was she to assert her ownership that she sold some machinery AFTER suit for $799. What she has on hand, how much has been stolen, how much rusted away, how much presented to favorites, how much destroyed by vicious idlers—all these questions she answers by saying that the annual Council of 1873 valued the property higher than the Council of 1877 thought proper; besides the bond-holders have no interest in the matter, and no business to be making such inquiries.

If accountable as Trustee, the city is certainly liable for the amount at which she appraised the property when she assumed the trust.

Brown v Lambert's Admr. 33 Gratt. 256
Story's Equity Jurisp.

We submit that it is too late for the city to deny her liability to pay the equivalent of the bonds, even if the bonds be void AB INITIO.

The defense of ULTRA VIRES is not allowed to prevail where it would defeat the ends of justice or work a legal wrong.

McCarthy v R. R. Co. 96 U. S. 258.

But the city having power to purchase under her charter, arranged, AS A NEW CONTRACT, to pay the bonds.

The obligation to do justice rests upon all persons, natural or artificial, and if a county obtains the money or property of others, without authority, the law will compel restitution or compensation.

Marsh v Fulton, 10 Wall. 676.
Argenti v San Francisco, 16 Cal. 255.
Dillon on Mun. Corp. (3d Ed.) Sec. 460 et seq.

A city is compelled to refund money raised by her from the sale of void bonds. Louisiana vs. Wood, 102 U. S. 294. Paul vs. Kenosha, 22 Wis. 266. Where bonds are issued to cover a valid debt, though the bonds are ULTRA VIRES and void, yet the indebtness must be paid. Hitchcock vs. Galveston, 96 U. S., 341.—Where the corporation has received the consideration it is estopped to dispute the validity of the bonds.

Pendleton Co. v Amy, 13 Wall. 297; also
Dillon on Mun. Corp. Secs. 460 : 260 1 : 524 : 938-9, 458 *et passim*.

In the exercise of powers regarding property, a corporation stands (in Va.) upon the same footing as individuals.

R. R. v Richmond, 26 Gratt. 83-95.

In this connection it will be observed that the charter of Parkersburg so provides, and is very broad.

(Add. Rec. p. 134.)

It may be urged that the deed of trust (p. 33) did not secure the entire issue, but only 80 per cent thereof, since the deed was conditioned that the O'Briens pay 5 per cent of the principal into a sinking fund for 16 years. The reply to that is obvious: if the O'Briens HAD paid the 80 per cent regularly for 16 years the city agreed to pay the rest; but in case they failed in the 16 years to pay either the coupons or the dues to the sinking fund, the trust was to stand for the full amount. The city so construed it, because she foreclosed for the full amount upon the first default.

Inasmuch as the city directed the sale under the trust, she should have notified the bond-holders, in order to enable them to take care of their interests; but no notice whatever was given them. They all resided in Maryland, and while the deed under which the city holds is no evidence against them, it shows that the only notice given to the public was POSTED IN, and confined to, the county of Wood, in West Va. (Rec. 50). That was not even constructive notice to non-residents.

It will be presumed that the bond-holders could have saved themselves, and that they would have done so, if they had known their security was to be put up for sale, for it was ample. The city then elected to take the property. Having it, she is concluded by every principle of estoppel.

Bigelow on Estoppel, 578.

The Bill charges and the evidence shows, that the purchasers saw the security and its value, and relied upon it, in determining the question of making the investment. By her recklessness, the city let the property deteriorate and go to waste. No estimate can be formed of what she ought to have received, unless we take her records and appraisement, made when she bought. In absence of positive proof as to actual value, the amount it was worth when it went into her hands, is presumably that at which she should account for it.

Dillon on Mun. Corp. Sec. 460.
Ringgold v Ringgold, 1 Harr. & Gill, 11.
Lupton v White, 15 Ves. 439.
Hart v Ten Eyck, 2 Johns ch. 116.

The court below has not decreed, in terms, that the bonds are valid. It decides that the city must pay the amount they represent; and it is submitted that as she is certainly liable either for the bonds or for the property she acquired, there is nothing in the decree of which she can complain.

Respectfully,
W. W. VAN WINKLE,
B. M. AMBLER,
of Counsel for Appellees.

PARKERSBURG, W. VA.,
Dec. 1882.

Chas. Marshall
of Counsel

16487

OFFICE SUPREME COURT U.S.
FILED
DEC 8 1882
JAMES H. McKENNEY, Clerk.

IN THE

Supreme Court of the United States,

No. 124.

THE CITY OF PARKERSBURG, APPELLANT.

vs.

ISABELLA BROWN AND OTHERS, APPELLEES.

BRIEF ON BEHALF OF APPELLEES.

If the bonds in question in this suit were *authorized*, we think it may be assumed that every question as to their validity that grows out of the details of issuing them, can be shown to be closed by repeated decisions of this Court.

The form of bond (Exhibit J. B., No. 3, p. 11, Record,) only recites the fact that the bond is issued under the authority of the Legislature. The ordinances and resolutions of the City showed on their face, substantial compliance with all the terms of the Act.

One question only is presented that may not be entirely concluded by previous decisions, and that is, whether the case comes under the Constitution of West Virginia, which went into operation in August, 1872, or under the former Constitution of that State.

So far as the Court may deem this inquiry pertinent, we respectfully submit that the case of List *vs.* The City of Wheeling, 7 W. Va., 501, is by no means conclusive in favor of the application of the later Constitution.

The answer to the question will depend on the answer to this other question, viz: Had the City of Parkersburg *authorized* the bonds to be issued, before the adoption of the Constitution of 1872?

The City of Wheeling plainly had not done so in the case referred to.

But in the case of these bonds, it appears by the record, that the enabling Act (that of 1868, December 15th,) conferred the authority to issue bonds to the amount of $200,000, to be used for the purpose of lending the sum to manufacturers, &c.

The Act does not require a separate election to be held to authorize *the loan* to each manufacturer, but requires one election to be held to authorize *the issue* of the bonds it provides for.

After the *issue* shall have been sanctioned by the vote, the details of the loan of any of the bonds, are regulated by distinct provisions of the Act. All these details, however, come after the *authorization.* The question, therefore, is not whether the *loan* of $20,000 to O'Brien & Bro. had been consummated before the adoption of the Constitution of 1872, but whether *the issue* of the $200,000 of bonds for the purpose named in the Act of 1868, had been authorized by the corporation.

The election was held April 17th, 1869. The proceedings of the City Council of 6th September, 1870, shows that the loan to O'Brien & Brother of $20,000 had already been agreed to, but that the actual delivery of the bonds awaited the perfection of the security required to be given.

This appears from the recitals of the resolutions of September 6th, 1870, and of April 22nd, 1873, Exhibit No. 3, pp. 33, 34, Record, and is confirmed by the terms of the deed of trust from O'Brien & Brother to Johnson, Exhibit, J. B., No. 5, p. 13.

It also expressly stated in the ordinance of June 10th, 1873, (Exhibit J. B., No. 2, p. 10,) that the council had agreed to loan the bonds under the former ordinances.

The order of council of June 10th, 1873, recites that the loan of $20,000 had been authorized, and merely provides for the delivering $10,000 of the bonds, and the order of September 9th, 1873, recognizing the existing authorization of the loan, directs the delivering of the residue of the bonds.

So far as *authorizing the issue* of the bonds by the corporation was concerned, we submit, therefore, that it is shown that it occurred before 1872. So far as the *delivery* of the bonds so authorized is concerned, that occurred after 1872.

We think, however, that the case is one that does not require us in order to sustain the decree, to maintain the legal validity of these bonds, upon the principles that control the obligations of a municipal corporation incurred in the ordinary exercise of its powers, and implying an obligation to provide for their payment by taxation.

We may assume for the purposes of this argument, that an ordinary municipal corporation cannot incur such obligations as these which it has no means to pay except by resort to taxation, unless the obligations be incurred for a public purpose.

And it may also be assumed that the purpose for which these bonds were issued, was not a public purpose in the sense of warranting a resort to taxation for their payment.

But a municipal corporation may contract valid obligations not of a strictly public character, which may be enforced against it. Its obligations are not necessarily void, although incurred in aid of objects which would contribute to the public good only in a secondary manner. In the case of the Loan Association *vs.* Topeka, 20 Wallace, 656, it is said:

"If these municipal corporations, which are in fact subdivisions of the State, and which for many reasons are vested with quasi legislative powers, have a fund or other property out of which they can pay the debts which they contract, without resorting to taxation, it may be within the power of the Legislature of the State to authorize them to use it in aid of projects strictly private or personal, but which would in a secondary manner contribute to the public good; or where there is property or money vested in a corporation of the kind for a particular use, as public worship or charity, the Legislature may pass laws authorizing them to make contracts with reference to this property, and incur debts payable from that source." p. 659.

We believe that the Court intended in using this language to recognize the distinction between the *governmental, legislative, or public character of a corporation*, and its quasi *proprietary* or *private character*, as defined in 1 Dillon Mun. Cor., 2nd Ed., sec. 39, a distinction on which he says, rests the doctrine of the implied liability of municipal corporations.

As to the proprietary or private character of these corporations, he says—

"But in its proprietary or private character the theory is that the powers are supposed not to be conferred primarily or chiefly from considerations connected with the government of the State at large, but for the private advantage of the particular corporation as a distinct legal personality, and as to such powers, and to property acquired thereunder, and contracts made with reference thereto, the corporation is to be regarded as *quoad hoc*, a private corporation, or at least not public in the sense that the power of the Legislature over it is not omnipotent."

See also Oliver *vs.* Worcester, 102 Mass., 489, 499.
Weightman *vs.* Washington, 1 Black, 50, 51.

The possibility of a municipal corporation having a quasi private character, is thus referred to in the U. S. *vs.* The Railroad Company, 17 Wallace, p. 332, after the Court had defined its public or governmental character.

"We admit the proposition of the counsel, that the revenue must be municipal in its nature to entitle it to the exemption claimed. Thus, if an individual should make the City of Baltimore his agent and trustee, to receive funds and distribute them in aid of science, literature or the fine arts, or even for the relief of the destitute and infirm, it is quite possible that such revenue would be subject to taxation. The corporation would therein depart from its municipal character, and assume the position of a *private trustee.* It would occupy a place which an individual could occupy with equal propriety. It would not in that action be an auxiliary or servant of the State, but of the individual creating the trust."

As to the power of municipal corporations to contract with reference to and dispose of their "private property," without express authority.

See 2 Dillon Mun. Corp., sec. 445, 2nd Ed.

The City of Parkersburg, by its charter, was clothed with a large share of these attributes of a quasi private corporation. It could "purchase, take, receive, hold and use goods and chattels, lands and tenements, and choses in action, and any interest, right or estate therein, either for the proper use of said town or in trust for the benefit of any persons or associations therein, and the same may grant, sell, convey, transfer, let and assign, pledge, mortgage, charge and encumber *in any case and in any manner in which it would be lawful for a private individual so to do.*" (Additional Record, page 52, top.)

We submit that in the case of a corporation possessing such powers as these, the power to contract an obligation, even for a purpose which would "contribute to the public good only in a secondary manner," does not necessarily imply an obligation to pay by taxation. In a Court of Equity at least where the remedy can be adjusted to the circumstances of each case, an obligation of such a corporation might well be supported and decreed to be paid out of property, and by means, which such a corporation might readily acquire in the exercise of the large powers to deal with property conferred upon it by its charter, and without invading the field of taxation at all.

In such a case and in such a Court, we submit that the Court will not decree the obligation *to be void*, because a like obligation incurred by a municipal corporation with different powers, might necessitate a resort to taxation to pay it, but it will uphold the obligation as one capable of being satisfied without taxation by a resort to other means of the City legally applicable to its payment.

We think it will appear that there was in fact such property in the hands of the city properly applicable to the payment of the actual obligation incurred by it on these bonds.

If that property has been lost or destroyed by the city, or is no longer in its hands to be applied to the purpose to which it was dedicated, and if it has been lost by such conduct on the part of the city as should make it chargeable in equity, *as if it still had the property*, then, if it became necessary in order *to enforce the equitable right that such conduct on the part of the city would create, to resort even to taxation*, we submit that such a resort, for such a purpose, brought about by such means, would be a very different thing from a resort to taxation to pay the bonds regarded simply as legal obligations of the city.

Our proposition is this. If the evidence shows that the actual contract of the city with reference to these bonds, was one that did not require a resort to taxation for payment, but if there was in the hands of the city, when the obligation was incurred, means sufficient to pay it, lawfully applicable to that purpose, and if the city assumed to act as trustee for that purpose, either by a contract that she could lawfully make, or by conduct which would subject her to the same liability that such a contract would impose, then there can be no difficulty in decreeing the bonds to be binding upon her. And if, after accepting that trust, the corporation has so dealt with the trust subject as to make itself chargeable in equity for the amount of it, by a breach of trust such as would make a private trustee so liable in equity, there can be no difficulty in decreeing that the corporation shall be so held, even if to make good the loss occasioned by her *breach of trust*, it becomes necessary to resort to taxation.

We think there is a plain and substantial distinction between *a resort to taxation to pay the bonds regarded as simple legal obligations* of the city, and a resort to taxation to make good a debt incurred by the city by the breach of a trust for which it is lawfully chargeable, in equity.

It will not be denied that cases often arise in which a municipal corporation, by injury to person or property, incurs legal obligations which are enforced by judgments at law, and that payment of these judgments by taxation can be enforced. We cannot see why if the injury be to *equitable rights* of property, by the breach for instance of a trust which the city may lawfully be charged with, a decree for that breach of trust may not also be paid by a resort to taxation. The only difference is in the situation of the party injured. In one case he has the legal title, and brings the appropriate legal action for the loss of his property. In the other the property is held in trust and his redress must be in equity. But there can be no difference in this respect between a judgment in *trover* for the conversion of property, and a decree for its value against a defaulting trustee. If, therefore, the city held in trust property sufficient to pay the bonds, payment of them would have been enforced out of that fund, and no objection could have been made to such an obligation to be so paid, on the ground that its object was not strictly a public one, for neither was the fund for its payment a public fund.

But if the city commits a breach of the trust so lawfully assumed by it, for which a Court of Equity would hold a private trustee liable under like circumstances, or if, without assuming the relation of trustee by a contract which it could lawfully make, the city so deals with property to which a trust was attached by law, as that if it were a private person, a Court of Equity would charge it as a constructive trustee, we respectfully submit that it would be no valid objection to a decree for such breach of trust, that it could only be paid by a resort to taxation, and that the money realized by such taxation would be applied to pay obligations, which but for such breach of trust, would have been paid from the trust property, and could not lawfully have been paid by taxation.

We believe the case here presented is one that comes entirely within these principles, if they be sound.

1st. Was the city authorized to give the bond in question, either by the enabling act of 1868, or by its charter?

The power to make the bond conferred by the enabling act, is not open to objection because it *might* have involved a resort to taxation for payment. If the provisions of the act are such that the city was authorized to accept and hold a private fund for payment of the bonds, there is no *express* provision of the act that requires a resort to taxation, and none ought to be implied for the purpose of defeating the rights of those creditors. Looking at the whole law, we find that as a preliminary to the issue of the bonds, the city is to agree with the borrower that the borrower shall pay to it the interest on the bonds, to be paid to the holders, and five per cent. of the principal annually to be invested by the city as a sinking fund to meet the principal.

The borrower was also to secure the payment of the loans, that is of the bonds themselves, by deed of trust or mortgage, or by other satisfactory security.

The borrower gave a deed of trust to Okey Johnson to secure the payment of the interest on the bond, and of five per centum of the principal for sixteen years, the city having agreed to accept that amount of the principal as sufficient to provide for payment of the bond at maturity.

The legal relation thus assumed by the city as between it and O'Brien, was that of guarantor of the payments which he covenanted to make as principal debtor. To enable it to perform this contract, the law required that it should receive security from O'Brien, sufficient to provide the means. As to those means unquestionably they constituted trust property for the benefit of the bondholder.

Whatever the character of the bonds was as against the city, O'Brien had put them out with his endorsement on them, and they were good as to him.

The property conveyed by the deed of trust, therefore, was for the benefit of the bondholders who in equity are the mortgagees or *cestuis que trust*, although the immediate *cestui que trust* was the City of Parkersburg. Now the proof shows that in fact, the whole of this trust property came to the hands of the city as a corporation.

It consisted of extensive machine shops with very costly fixed and other machinery and tools for conducting a large business.

The value shown by the proof put upon it by the city when it came to its hands, and it actually took possession of the property, was not less than $28,000.

Now that property, as it was when the city took it, a completely equipped and costly manufactory, has in its hands ceased to exist in specie. The machinery has been sold or lost.

If aught remains of it, is only because it is so worthless that it could not be sold, as was done with some, or given away as seems to have been done with reference to other parts.

The building in a bad condition is there, but the property as a machine shop has ceased to exist, and this occurred after the city had taken possession of it, subject to the trusts declared in the deed to Johnson.

That the property was trust property for the benefit of the bondholders, we think cannot be doubted.

That it came to the hands of the city clothed with that trust, and was taken by the city with the express agreement to hold it as trust property, is abundantly shown by the evidence.

When the city purchased the factory with the fixtures at the sale made under the Leach trust in 1874, for $300, it took it subject to the lien on it for the benefit of these bondholders of $20,000. (Exhibit J. B. No. 7, original record, p. 21, top.)

When it purchased some of the machinery at the sale made by O'Brien's assignee in bankruptcy, (a sale that the city ought not to have permitted,) it took credit for the purchase money on its claim against O'Brien's estate, arising out of its liability for these bonds.

Under the Act, the city was required to take security, and it might have done so either by taking the deed of trust, or by requiring the security to be placed in its hands directly. When it took possession of the security, we submit that it at once assumed all the responsibility and liability that would have been imposed on it, had it taken the security into its hands before lending the bonds to O'Brien.

The trust in favor of the bondholders attached to the property in the hands of the city, and it had in its possession a fund adequate to pay the bonds, and the breach of the condition of the deed of trust on the part of O'Brien authorized the immediate application of the trust property to that purpose, or on the other hand, it placed the city in the possession of property, not public, which it might lawfully have used in paying the bonds, without any resort to taxation.

As to *that* property, the bonds were not illegal, and if it remained in the hands of the City, a Court of Equity would have no difficulty in decreeing its application to the payment of the bonds, *certainly* if the trust assumed by the City was an express trust, lawfully assumed.

We submit that the City might lawfully assume such a trust, either under the provisions of the enabling act, or under the comprehensive power to deal with property conferred upon it by its charter. The latter expressly authorizes it to take and receive all kinds of property either for the proper use of the town, or in trust for the benefit of any persons or associations therein.

And even if it could not lawfully assume an *express trust* with reference to this property, we submit that it could render itself liable as constructive trustee by dealing with the trust property, knowing its trust character, so as to injure the *cestuis que trust.* To make it liable as a constructive trustee, we suppose the acts relied on must be corporate acts, that is done by the corporation, as distinguished from the unauthorized acts of its officers and agents.

Any acts of a corporation that would make it liable at law for conversion of property or trespass, would, we submit, subject it to liability in equity for similar injury to equitable rights.

It is not pretended that the acts done with reference to the trust property in this case, were other than *corporate* acts of the kind described.

As to the extent and nature of the relief, the Circuit Court considered that it would be best secured by requiring the City to pay the bonds and interest as if it still retained the means that it had wrongfully wasted.

The actual decree for payment of money was for a much less sum than the proof showed to have been in the hands of the City, applicable to the payment of the bonds.

The Court seems to have considered that the proof showed trust property sufficient to pay the bonds, and it was justified in that view not only by the proof of actual value, but by the presumption that the provisions of the law as to security, were complied with.

In view of the fact that the property received by the City, has ceased to exist in specie, as a complete and equipped factory, by the act of the City itself, and that it would certainly cost far more to replace it, than the remnants, the "*disjecta membra*" could possibly be made to realize, it would be a very hard measure of justice to give the *cestui que trusts* only what the remnants would produce.

As against a recreant trustee, we think the property should be taken at the value put upon it by the trustee, a value that the trustee was bound to see that it possessed before accepting it.

The only modification of the decree that we think admissible in the interests of justice, would be to treat the City as in funds for the payment of the bonds from the moment it took possession of the trust property, and liable to pay the face of the bonds as a present equitable obligation.

The fact that the holders of the bonds gave less than their face value for them is of no consequence.

As between them and O'Brien, the bonds were good, and the holders entitled to payment in full. As it is only out of the property of O'Brien that we claim payment, the City has no concern in the question. Our claim against her is not that she shall pay the bonds as obligor, "*de bonus propriis,*" but that as a defaulting trustee, she shall replace the wasted trust funds to the full amount. If those funds were sufficient to pay the bonds in full when she received them, we only ask that she shall replace them to the amount of the bonds.

The claim of the City to apply any part of the trust assests to her indemnity for money paid by her, cannot be admitted.

Because, if she was liable on the bonds, she was liable only as guarantor, between her and O'Brien, and the guarantor cannot be paid out of the estate of the principal debtor, until the creditor who holds the guaranty has been paid in full. The guarantor cannot perform part of his contract of guaranty, and then claim to share with the creditor in the estate of the debtor, while part of the debt covered by the guaranty remains unpaid. Whatever a guarantor in default might receive from the estate of the debtor, would have to be paid to the creditor on account of the unsatisfied obligation of the guarantor to him.

If, on the other hand, the City is not legally liable on the bonds, payments made by her are voluntary payments. She did not *purchase* the coupons, but paid and extinguished them. The trust is not to indemnify her, but to pay the bonds.

It is believed that the obligation of the Appellant can be upheld without violating any principle, and the decree, if it err at all, is more favorable to the City than she had a right to ask.

In addition to the cases cited in the brief of Messrs. Van Winkle and Ambler, the Court is respectfully referred to the following.

Railroad Companies *vs.* Schutte, 103 U. S. R., 138-142.
Pendleton *vs.* Avery, 13 Wal., 305.
Bissell *vs.* Jefferson, 24 Howard, 300.
Louisiana *vs.* Wood, 96 U. S., 298.
Marsh *vs.* Fulton Co., 10 Wal., 676.

In conclusion it is submitted that such cases as Lowell *vs* Boston, and Allen *vs.* Jay, have no application.

We do not maintain that if the city could not lawfully issue its bonds in aid of manufacturing enterprises, such acts would be made lawful by requiring the borrower to secure the city against loss.

In both those cases, the application was to restrain the issue of the bonds, nor are we informed as to the extent of the powers of those corporations as compared with those of Parkersburg.

But to make the cases alike, we should suppose that Boston had issued her bonds under the enabling act, and had actually received from the borrowers adequate security for the payment of them, and having actually taken that security into her hands, had then destroyed it.

When sued by a *bona fide* holder of those bonds, and sought to be held accountable for the wasted trust funds received from the borrowers, for the use of the bond-holders, we cannot believe that the complainants would have been denied relief, or that they would have received a less measure of relief than full compensation, or restitution by the defaulting trustee.

But if the city be not liable for the reasons above stated, we submit that her liability is clear on another ground. She had, under her charter, ample power to purchase any kind of property, as we have seen.

On the 26th Nov., 1873, O'Brien & Brother executed a deed of trust of certain property, including their factory and fixtures, to Johnson, in trust to secure to Leach the payment of $3000. (Exhibit, J. B., No.6, p.18.)

On default made, the property was sold by the trustee, and purchased by the city for $300, "*subject* to a trust thereon in favor of the city of Parkersburg for $20,000," and the trustee conveyed the property to the city on the 8th of December, 1874. (Exhibit, J. B. No. 7, p. 20–21.) Leach was not paid in full, because the mortgaged property, *sold subject to the lien*, produced less than his debt.

The "trust in favor of the city of Parkersburg for $20,000," referred to in the deed from Johnson to the city, is the very trust that secures these bonds.

It is not a trust in favor of the city of Parkersburg in fact, but a trust in favor of the bondholders. More especially is this so, if the bonds were void as against the city as is contended. If that be true, there can be no doubt that the bonds were good as against O'Brien & Brother who had endorsed them to the appellees. The case would then stand thus.

O'Brien & Brother had issued bonds to the amount of $20,000, payable on certain terms, and had secured those bonds by a deed of trust to Johnson on the 13th of May, 1873. The conditions of that deed are to be found in the instrument itself, and the ordinances therein referred to and made part of the deed. Those conditions are the payment of interest on the bonds annually, and the annual payment for sixteen years of five per cent. of the principal as a sinking fund to pay the bonds at maturity.

The bondholders could undoubtedly have enforced the terms of this deed against the property.

Under these circumstances, a creditor of O'Brien, having a junior lien on the same property, forecloses and sells subject to the encumbrance on the property, and at that sale, the city buys the property for $300 subject to the prior lien of $20,000.

O'Brien & Brother made default in paying interest on these bonds, and the city, having purchased the equity of redemption, undertakes to pay the lien subject to which she had purchased the property, and which constituted part of the purchase money. She pays interest on the bonds for two years, and then, still retaining the property, holding it as her own, renting it out, offering it for rent, and selling part of it, and putting the money into the treasury, declines to pay the lien subject to which she purchased it, *and this because the bonds are void as to her.*

But as between the creditors and O'Brien & Brother, as I have said, the bonds were perfectly good, and the City bought subject to the lien of these bonds, thereby assuming the obligation of the lien that the real debtors had imposed on the property. We are entitled to enforce them according to their tenor and effect as good and valid obligations of O'Brien & Brother.

The record of the proceedings of the City appearing in the "Addition to Record," shows how the City treated the property as her own. She still has what is left of it, is here in this Court claiming it, but refusing to pay the obligations subject to which she purchased it.

Under her charter, she had full power to assume the payment of liens existing on property which she purchased. She purchased this property for $300, and was allowed to purchase it at that price, because it was subject to a lien of $20,000, and thereby the junior creditor lost part of his debt. Her actual agreement to assume the lien, we think, is proved by the facts above mentioned, by the terms of the sale to her, by her actual payment of interest for two years, and by her having actually dealt with the property as her own, which she might lawfully do only on the condition that she should assume the payment of the lien. See note on next page

We respectfully submit that her liability in this aspect of the case, is properly declared by decreeing the bonds to be binding upon her. Of course this view also disposes of her claim to be indemnified for her payments, and subjects her to the obligation not only to pay interest as it accrues, but also to provide a sinking fund as O'Brien & Brother undertook to do.

We shall refer in argument to the following extract from the Code of West Va., sec. 6, ch. 72:

"The trustee in any such deed (of trust,) shall whenever required by any creditor secured, after the debt due to such creditor shall have become payable, and default shall have been made in the payment thereof, or of any part thereof, sell the property conveyed by the deed at public auction," &c. &c.

Respectfully submitted,

CHARLES MARSHALL,

Counsel for Appellees.

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, it is submitted, is right.